

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACQUELINE M. GARCIA;
SIGIFREDO MOLINA VARELA,
also known as Sigi,

Defendants.

DOCKET NO. 13-CR-004-J
Vol. V of V
Pages 775 - 873
CHEYENNE, WYOMING
May 13, 2013
9:50 a.m.

TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE THE HONORABLE ALAN B. JOHNSON
UNITED STATES DISTRICT JUDGE
and a jury of twelve and two alternates

APPEARANCES:

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1 (Proceedings reconvened 9:50 a.m. in chambers
2 in the presence of the Court and counsel.)

3 THE COURT: Let the record reflect that we are meeting
4 in chambers. We have had an instruction conference that's been
5 off the record, and we're now in the presence of our court
6 reporter, Jan Davis, and I think we are close to having reached
7 a group of instructions that can be given to the jury.

8 I would note that I've marked Defendant Sigi Molina's
9 Instruction No. 9 and Instruction No. 17 as refused, although
10 similar instructions are contained in the instruction package.
11 And those are 9 and 17, again.

12 Does the Government have any objections to the
13 instructions as proposed or the verdict form?

14 MR. HEALY: No, Your Honor. Thank you.

15 THE COURT: Does Jackie Garcia?

16 MR. FLEENER: Yes, Your Honor. We would object to
17 Instruction No. 35. And just for the record, and I made this
18 argument off the record, but my concern is that both defendants
19 are sort of being lumped up together. And therefore,
20 instructions needed to make sure that the evidence is looked at
21 consistent with the law as it applies to both defendants, I
22 believe the instruction that I submitted, my first instruction,
23 is not only a correct statement of the law, but better
24 separates the two defendants.

25 So I would object to 35. I believe that 35, the way

1 35 reads, the jury could be confused and would be less likely
2 to do an individualized determination of reasonable
3 foreseeability to each individual defendant. So I would
4 object.

5 THE COURT: All right. The Court will overrule the
6 objection. We have modified Instruction 30 and Instruction 35
7 to emphasize individual defendant consideration.

8 And we've also given the Defendant Garcia's
9 instruction, short instruction, as 56-A that deals with the
10 statement that was made by Mr. Molina.

11 MR. FLEENER: Other than that objection, I have no
12 other objections, Judge.

13 THE COURT: Thank you.

14 MR. JUBIN: On behalf of Sigi Molina, I don't object
15 to the instructions given.

16 I do object to the exclusion of Molina's proposed
17 Instruction No. 17 which requires unanimity of the object of
18 the conspiracy; not so much that the jury couldn't find one or
19 the other, but that the jury ought to have to be unanimous as
20 to which object it finds.

21 THE COURT: I overrule the objection, but feel that
22 the issue is sufficiently covered in another instruction
23 dealing with -- I forget the number -- dealing with
24 consideration of the conjunctive.

25 MR. JUBIN: If I remember correctly, Your Honor, it

1 was Instruction 25 that you referenced off the record earlier
2 as containing the appropriate unanimity requirements. And I
3 simply disagree and would object. Thank you.

4 THE COURT: Thank you.

5 I've told the -- Mr. Lang that noon would be fine for
6 the jurors to go. It is going to be close, but if they're a
7 little late that's fine. What arrangements are you making for
8 them?

9 THE CLERK: Your Honor, we have made reservations for
10 them up at The Egg and I. I gave them a window 12:00 to
11 12:30ish.

12 THE COURT: That's good.

13 Do you want to take a few minutes before we go in and
14 get started again and talk to your clients and get warmed up?

15 MR. JUBIN: I think that would be helpful.

16 Going to read the instructions first?

17 THE COURT: I will read a portion of the instructions
18 first and then hear our closing statements and then finish with
19 the -- I think it is maybe Instruction 41 is where I start
20 again, something like that.

21 THE CLERK: And, Your Honor, prior to coming in we
22 were missing a couple of jurors, so I will need to go check on
23 those folks and then make a call to the Marshal.

24 THE COURT: That's right. We're right at 10:00 when I
25 told them to be here.

1 MR. JUBIN: Oh, before we leave the record here, I'm
2 still considering whether or not to put on a defense case, that
3 is, to call a gentleman named Larry Sinning as a witness, and
4 in part my decision depends upon an advanced evidentiary ruling
5 with respect to the scope that the Court may permit on
6 cross-examination.

7 Typically under the rules, once a party has testified
8 the cross-examination is limited to the scope of the direct
9 examination. My understanding -- my intent in calling
10 Mr. Sinning would simply be to indicate that he never received
11 any controlled substances from Mr. Molina, and, indeed, never
12 met him until he was introduced to him in the jail.

13 My understanding is that the Government's response to
14 that would be the desire to introduce some statements that
15 Mr. Molina apparently and allegedly made to Mr. Sinning that
16 may be very self-inculpatory. And I don't intend to open that
17 issue, and I'm wondering what the Court's view of that is.

18 MR. HEALY: Judge, may I respond? I have two
19 responses to that. The first is the most concerning to me,
20 that is, that if the indictment is not going back to the jury,
21 the Court never instructed the jury on manner and means.
22 Manner and means are allegations and unlike overt acts do not
23 need to be proved beyond a reasonable doubt.

24 If Mr. Jubin asks that question to Larry Sinning and
25 he says, "No, I don't know him," and then Mr. Jubin gets up and

1 waves the Indictment around in closing and says, "Look, the
2 manner and means here says that he distributed," they don't
3 have to find that he distributed to Larry Sinning, Junior. So
4 I'm not sure what the relevance is.

5 And any relevance, too, on 403 comes into play here
6 because talk about confusion, if they start looking at the
7 manner and means now, I'm going to ask that the entire
8 Indictment be sent back with them, that they review that. It
9 seems like there's -- it's -- it is, as some of Mr. Jubin's
10 language before in his jury instructions said, fraught with
11 danger.

12 The other issue is that I think that once this witness
13 is called to discuss whether he ever bought methamphetamine
14 from Mr. Molina, I certainly can stand on cross-examination and
15 say, "How do you know Mr. Molina?" "I met him in jail." "Did
16 Mr. Molina say anything to you in jail?" "Yes, he told me that
17 he never thought Kyle Carothers would testify against him
18 because they helped raise Kyle Carothers." A. And B,
19 "Besides, the only thing they can prove I ever did was about 2
20 to 3 pounds, not the 30 that they're trying to prove."

21 But I think the first one is the one that's the real
22 problem, Judge, the relevance and the 403 issue.

23 THE COURT: Well, I'm also -- suspect that Ms. Garcia
24 has some concern about the Indictment going to the jury.

25 MR. FLEENER: Yes, Judge.

1 MR. HEALY: And we will need an instruction on the
2 manner and means if we do that, Judge, at least as far as the
3 Government is concerned, what the manner and means -- and I
4 will need to run up and do the research on that.

5 THE COURT: Well, I'm not going to preclude you from
6 raising the issue. I will allow you to question Mr. Sinning.

7 MR. JUBIN: I will consider that and decide whether or
8 not as a strategic matter it makes sense to call Mr. Sinning or
9 not, and I guess you will know when I either call him or rest.

10 THE COURT: Fair enough.

11 MR. JUBIN: I don't think it would be helpful for the
12 jury to have the Indictment.

13 MR. HEALY: Well, if that's true, then how are we
14 going to do the manner -- if you're going to refer to the
15 Indictment in your closing, refer to something the Judge hasn't
16 instructed them on, how is that going to work?

17 THE COURT: I don't know. It is a problem you have.
18 It seems to me that the usual instruction is is that -- you
19 know, I've never liked -- let me start from the beginning. I
20 hate the idea of presenting indictments to juries that have a
21 long list of manners and means, schemes and overt acts because
22 it does require explanation to the jury. And in these kinds of
23 cases there is no requirement that you prove a specific overt
24 act. So you don't have that obligation and all you're asking
25 for is juror confusion.

1 And also, the danger becomes that the Indictment
2 becomes evidence at that point which is a bad thing for a
3 defendant and kind of unfair always in my view. And so
4 whenever I can, I try to just tell the -- because I'm already
5 giving the count in the instructions, so there's nothing hidden
6 there. The jury has it, whatever they need.

7 MR. JUBIN: Short answer is as I sit here, I'm
8 inclined not to call Mr. Sinning.

9 MR. HEALY: Judge, that's really good to know, I have
10 to tell you, not Mr. Jubin's comment but yours, because we have
11 been going back and forward about this in the office whether we
12 should do speaking indictments or not. And if you don't mind,
13 I would like to share your concern with management.

14 THE COURT: Well, I realize you've got to prove an
15 overt act on some conspiracies, and so you have that problem.
16 And I've often wondered maybe just the instruction should kind
17 of cherry-pick the overt act and put -- find some way to put it
18 in the instructions rather than give them a long list. And
19 I've seen some where we have had a stack of material where
20 there's no evidence on, you know, but here it was in front of
21 that jury. And some of it is pretty prejudicial stuff.

22 MR. HEALY: Would you be able to let me know before we
23 convene so that we can get a -- I can at least make a record on
24 the instruction needed for manner and means if you're going to
25 do this, that it is not required the -- the Government is not

1 required to prove each of the manner and means listed?

2 MR. JUBIN: I will let you know as soon as I make that
3 decision finally, and I'm pretty close.

4 MR. HEALY: Okay. Thanks, Judge.

5 THE COURT: Yeah, and I have no objection to -- John,
6 let me give you these instructions that Mr. Jubin gave to us.

7 You want me to sign yours, too, Tom, the refused?

8 MR. FLEENER: The -- yes, please, if you would sign --
9 yes, my proposed -- my first proposed instruction and -- just
10 the first proposed instruction, yes, Judge. Thank you for
11 bringing that up.

12 Yes, sir, thank you.

13 THE LAW CLERK: Just that one?

14 MR. FLEENER: Just that one. We amended the 924(c)s,
15 and we have accepted the Bruton one. So it is just that one.

16 THE LAW CLERK: Double-check and make sure all the
17 changes are correct.

18 MR. HEALY: Did you just give us the new ones?

19 THE LAW CLERK: Yeah.

20 MR. HEALY: Are these -- oh, okay.

21 THE LAW CLERK: I just figured you could substitute
22 them. I didn't want to print out 10,000 pages. And I hope
23 that is everything. Oh, wait, wait, wait. I missed one. I
24 missed the 924(c) one, I think -- sorry -- which is 37. Yeah,
25 I missed 37. Let me go fix that for you.

1 MR. HEALY: Thanks, Sherrill.

2 MR. HEALY: Judge, time on closings?

3 THE COURT: I think you could do it in 30 minutes.

4 MR. JUBIN: I think we should all be restricted to ten
5 minutes each.

6 MR. HEALY: I'm responding to two attorneys. I will
7 take 30, Judge. I would be happy with 30. Don't cut me off.

8 MR. FLEENER: Can I have your extra? I will have you
9 go first. I will take the remaining 27.

10 THE COURT: Just depends what is said in that ten
11 minutes.

12 MR. HEALY: Shorter ones are more effective than the
13 longer ones, I think.

14 MR. JUBIN: We shall see.

15 THE COURT: We can go off the record.

16 (Discussion off the record.)

17 (Proceedings recesssed 10:15 a.m.)

18 (Proceedings reconvened in open court 10:25 a.m.)

19 (Following in the presence of the defendants.)

20 THE COURT: Good morning, all.

21 Counsel, have you had an adequate opportunity to speak
22 to your clients this morning?

23 MR. FLEENER: Yes, Your Honor.

24 MR. JUBIN: Yes, Your Honor, I have.

25 THE COURT: You ready to bring the jury in?

1 MR. JUBIN: Yes.

2 MR. FLEENER: Yes.

3 THE COURT: All right.

4 (Following in the presence of the jury.)

5 THE COURT: Good morning, ladies and gentlemen. When
6 we recessed last Friday -- I hope you all had a very pleasant
7 and relaxed weekend, were able to catch up on business -- the
8 Government had rested its presentation of the evidence.

9 Does Defendant Garcia have any further evidence she
10 wishes to present in this matter?

11 MR. FLEENER: No, Your Honor. We rest.

12 THE COURT: Mr. Jubin, does Defendant Molina have any
13 further evidence he wishes to present in this matter?

14 MR. JUBIN: No, Your Honor. We rest.

15 THE COURT: Very well, the evidence, then, is closed
16 in this matter.

17 The next step in the proceedings will be to present
18 the instructions or at least some of the instructions of the
19 Court to you.

20 All of the instructions are contained in this
21 instruction booklet and it has tabs in it. Behind the first
22 tab are the instructions that were given to you at the
23 beginning of this trial, will go into the jury room with you,
24 as I said, and you should feel free to reread those
25 instructions. I will not be reading them to you now.

1 Behind the second tab are the instructions I will be
2 reading now. They focus primarily on the substantive law
3 issues that you will be considering. And I want to tell you
4 that during the closing statements you hear from Counsel, they
5 may refer to any instructions that I will be giving to you this
6 morning.

7 Once those are read to you, Counsel will present their
8 closing statements to you to assist you in analyzing the
9 evidence you've received in this case and applying the law, and
10 then I will give you another group of instructions which deal
11 primarily with just the evidentiary issues that you consider
12 during the course of your deliberations in this matter.

13 And the final instruction -- not instruction that I
14 give to you, but the final document in this book of
15 instructions is the verdict form upon which the jury shall
16 record its unanimous verdict in this case. And there are
17 really two verdict forms, one for each of the defendants, since
18 you will be considering their cases separately.

19 Now, a little bit about this booklet. The
20 instructions have a number at the top of each instruction.
21 That number is only the substitute for a name for the
22 instruction so when we have our conference if the Government
23 has an objection, they say, "Judge, will you look at
24 Instruction No. 50?" for example, and we can go right to it
25 because there's the number. Otherwise, they would have to say,

1 "Judge, will you go to instruction that says something like,"
2 and everyone is scrambling around looking for the language that
3 they might be describing.

4 So there's no significance to the numbers. I haven't
5 numbered them from the least important to the most important
6 instruction. They're all equally important and should be
7 considered by you in your deliberation.

8 When this case finally goes to the jury, you will find
9 that certain gaps in the numbering exist. That simply means
10 that in our deliberations we have talked and decided, well, we
11 don't need that one, so rip it out. It's gone. There's no
12 significance in that gap beyond that.

13 There may be some instructions that are not in order,
14 and if so, all we've decided is that it just reads better in
15 the order that we've placed them. So don't give any
16 significance to those things or the jumping or there may be a
17 missing number or something of that nature.

18 I will be giving you further instructions on these
19 matters as we progress throughout the day. I'm starting on the
20 second group of instructions at this point, so I will ask you
21 to listen as we read the instructions.

22 I hope everyone can hear. I will try to keep it
23 going.

24 Members of the jury, now that you have heard all of
25 the evidence, it becomes my duty to give you the final

1 instructions of the Court as to the law that is applicable to
2 this case and which will guide you in your decisions.

3 All of the instructions of law given to you by the
4 Court, those given to you at the beginning of the trial and
5 those given to you during the trial and these final
6 instructions, must guide and govern your deliberations. It is
7 your duty as jurors to follow the law as stated and all of the
8 instructions of the Court and to apply these rules of law to
9 the facts as you find them to be from the evidence received
10 during the trial.

11 Counsel will quite properly refer to some of the
12 applicable rules of law in their closing arguments to you. If,
13 however, any difference appears to you between the law as
14 stated by Counsel and that as stated by the Court in these
15 instructions, you, of course, are to be governed by the
16 instructions given to you by the Court.

17 You are not to single out any one instruction alone as
18 stating the law but must consider the instructions as a whole
19 in reaching your decisions. Neither are you to be concerned
20 with any opinion you may have as to what the law ought to be.
21 It would be a violation of your sworn duty to base any part of
22 your verdict upon any other view or opinion of the law than
23 that given in these instructions of the Court, just as it would
24 be a violation of your sworn duty as judges of the facts to
25 base your verdict upon anything but the evidence received in

1 the case.

2 You were chosen as jurors for this trial in order to
3 evaluate all of the evidence received and to decide each of the
4 factual questions presented by the allegations brought by the
5 United States in the Indictment and the pleas of not guilty by
6 the defendants. In resolving the issues presented to you for
7 decision in this case, in this trial, you must not be persuaded
8 by bias, prejudice or sympathy for or against any of the
9 parties to this case or by any public opinion. Justice through
10 trial by jury depends upon the willingness of each individual
11 juror to seek the truth from the same evidence presented to all
12 of the jurors here in the courtroom to arrive at a verdict by
13 applying the same rules of law as now being given to each of
14 you in these instructions of the Court.

15 The Government has the burden of proving the
16 Defendants Jacqueline M. Garcia and Sigifredo Molina Varela
17 guilty beyond a reasonable doubt. The law does not require a
18 defendant to prove his or her innocence or produce any evidence
19 at all. The Government has the burden of proving the defendant
20 guilty beyond a reasonable doubt and if it fails to do so, you
21 must find the defendant not guilty.

22 Proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the defendant's guilt. There are few
24 things in this world that we know with absolute certainty, and
25 in criminal cases, the law does not require proof that

1 overcomes every possible doubt. It is only required that the
2 Government's proof exclude any reasonable doubt concerning the
3 defendant's guilt.

4 A reasonable doubt is a doubt based on reason and
5 common sense, after careful and impartial consideration of all
6 the evidence in the case. If, based on your consideration of
7 the evidence, you are firmly convinced that the defendant is
8 guilty of the crime charged, you must find the defendant
9 guilty. If, on the other hand, you think there's a real
10 possibility that the defendant is not guilty, you must give the
11 defendant the benefit of the doubt and find the defendant not
12 guilty.

13 There's nothing particularly different in the way that
14 a juror should consider the evidence in a trial from that in
15 which any reasonable and careful person would deal with very --
16 any very important question that must be resolved by examining
17 facts, opinions and evidence. You are expected to use your
18 good sense in considering and evaluating the evidence in the
19 case. Use the evidence only for those purposes for which it
20 has been received and to give such evidence a reasonable and
21 fair construction in the light of your common knowledge of the
22 natural tendencies and inclinations of human beings.

23 If a defendant be proved guilty beyond a reasonable
24 doubt, say so. If not proved guilty beyond a reasonable doubt,
25 say so. Keep constantly in mind that it would be a violation

1 of your sworn duty to base a verdict upon anything other than
2 the evidence received in the case and the instructions of the
3 Court. Remember as well that the law never imposes upon a
4 defendant in a criminal case the burden or duty of calling any
5 witnesses or producing any evidence because the burden of
6 proving guilt beyond a reasonable doubt is always with the
7 United States.

8 An Indictment is but a formal method of accusing a
9 defendant of a crime. It is not evidence of any kind against
10 the accused. The defendants have pleaded not guilty to the
11 charges contained in the Indictment. The pleas of not guilty
12 put in issue each of the essential elements of the offenses as
13 described in these instructions and imposes on the Government
14 the burden of establishing each of these elements by proof
15 beyond a reasonable doubt.

16 The defendants are not on trial for any act or any
17 conduct not specifically charged in the Indictment. A separate
18 crime or offense is charged against the defendant in each count
19 of the Indictment. Each offense and the evidence pertaining to
20 it should be considered separately. The facts that you may
21 find the accused guilty or not guilty of one of the offenses
22 charged should not control your verdict as to any other
23 offense.

24 Count 1 of the Indictment charges that from on or
25 about March 2011 through and including January 15, 2013, in the

1 District of Wyoming and elsewhere, the Defendants Jacqueline M.
2 Garcia (Garcia), and Sigifredo Molina Varela, also known as
3 Sigi Molina, Kyle Lee Carothers, Whitney D. Rose, Travis K.
4 Smith, Larry D. Sinning, Junior, Christopher L. George, Michael
5 J. Adams, Heidi L. Blankenship, and Robert C. Brodie, together
6 with persons both known and unknown to the grand jury, did
7 knowingly, intentionally and unlawfully combine, conspire,
8 confederate and agree to possess with intent to distribute and
9 to distribute 500 grams or more of a mixture or substance
10 containing a detectable amount of methamphetamine, a Schedule
11 II controlled substance, in violation of Title 21 United States
12 Code, Sections 846 and 841(a)(1) and (b)(1)(A).

13 The Indictment charges that the offenses alleged in
14 the Indictment were committed on or about certain dates.
15 Although it is necessary for the United States to prove beyond
16 a reasonable doubt that the offenses were committed on a date
17 reasonably near the date alleged in the Indictment, it is not
18 necessary for the United States to prove that the offenses were
19 committed precisely on dates charged.

20 The charge contained in the Indictment is based upon a
21 statute which is federal law, Title 21 United States Code,
22 Section 846 which reads in pertinent part as follows: Any
23 person who attempts or conspires to commit any offense defined
24 in this subchapter is guilty of an offense against the United
25 States.

1 A subchapter referred to above includes Section
2 841(a)(1) of Title 21 of the United States Code which provides
3 in pertinent part: It shall be unlawful for any person
4 knowingly or intentionally to distribute or possess with intent
5 to distribute a controlled substance.

6 An act is done knowingly if done voluntarily and
7 intentionally and not because of mistake or accident or other
8 innocent reason. The purpose of adding the word "knowingly" is
9 to ensure that no one will be convicted for an act done because
10 of mistake or accident or other innocent reason. When the word
11 "knowingly" is used in these instructions, it means a defendant
12 realized what he or she was doing and was aware of the nature
13 of his or her conduct and did not act through ignorance,
14 mistake or accident.

15 The intent of a person or the knowledge that a person
16 possesses at any given time may not ordinarily be proved
17 directly because there's no way of directly scrutinizing the
18 workings of the human mind. In determining the issue of what a
19 person knew or what a person intended at a particular time, you
20 may consider any statements made or acts done or acts omitted
21 by that person and all other facts and circumstances received
22 in evidence which may aid in your determination of that
23 person's knowledge or intent.

24 You may infer, but you are certainly not required to
25 infer that a person intends the natural and probable

1 consequences of acts knowingly done or knowingly omitted. It
2 is entirely up to you, however, to decide what facts you find
3 from the evidence received during this trial.

4 Possession, as that term is used in this case, may be
5 of two kinds: Actual possession and constructive possession.
6 A person who knowingly has physical control over a thing at a
7 given time is in actual possession of it. A person who,
8 although not in actual possession, knowingly has both the power
9 and the intention at a given time to exercise dominion or
10 control over a thing, either directly or through another person
11 or persons, is in constructive possession of it.

12 Possession may be sole or joint. If one person alone
13 has actual or constructive possession of a thing, possession is
14 sole. If two or more persons share actual or constructive
15 possession of a thing, possession is joint.

16 You may find that the element of possession as that
17 term is used in these instructions is present if you find
18 beyond a reasonable doubt that a defendant had actual or
19 constructive possession, either alone or jointly with others.

20 The Defendants Jacqueline M. Garcia and Sigifredo
21 Molina Varela are charged in the Indictment with a violation of
22 Title 21 United States Code, Section 846. This law makes it a
23 crime for anyone to conspire with someone else to violate
24 federal laws pertaining to controlled substances. In this case
25 the defendants are charged with conspiracy to possess with

1 intent to distribute and to distribute methamphetamine.

2 To find the defendants guilty of this crime,
3 considering each defendant separately, you must be convinced
4 that the Government has proven each of the following elements
5 beyond a reasonable doubt.

6 First, from on or about March 2011 through and
7 including January 15, 2013;

8 Second, in the District of Wyoming;

9 Third, two or more persons agreed to violate the
10 federal drug laws;

11 Fourth, the defendant knew the essential objective of
12 the conspiracy to distribute methamphetamine, a controlled
13 substance;

14 Fifth, the defendant knowingly and voluntarily
15 involved himself or herself in the conspiracy;

16 And six, there was interdependence among the members
17 of the conspiracy, that is, the members in some way or manner
18 intended to act together for their shared mutual benefit within
19 the scope of the conspiracy charged.

20 If the Government fails to prove any of these elements
21 by proof beyond a reasonable doubt, you should find the
22 defendant not guilty.

23 If, on the other hand, the Government proves each of
24 the elements by proof beyond a reasonable doubt, you should
25 find the defendant guilty.

1 You are instructed that when an offense is charged in
2 the conjunctive, the offense may be proven in the disjunctive.

3 For example, Count 1 of the Indictment charges the
4 Defendants Jacqueline M. Garcia and Sigifredo Molina Varela
5 with conspiracy to violate the federal controlled substances
6 statute. The Indictment charges that the defendants and his,
7 her or their conspirators, cococonspirators, did knowingly,
8 intentionally and unlawfully combine, conspire, confederate and
9 agree with other persons to commit unlawful activity, that is,
10 1, possess with intent to distribute methamphetamine; and/or 2,
11 to distribute methamphetamine.

12 For purposes of the charge contained in the Indictment
13 the Government is required to prove beyond a reasonable doubt
14 that the purpose of the conspiracy included either, 1, to
15 knowingly, intentionally and unlawfully possess with intent to
16 distribute methamphetamine; or 2, to knowingly, intentionally
17 and unlawfully distribute methamphetamine.

18 Thus, in order for you to find the defendants guilty,
19 you must find beyond a reasonable doubt that at least one of
20 these two purposes were objects of the conspiracy, but you need
21 not find that both of the purposes were objects of such
22 conspiracy.

23 A conspiracy is an agreement between two or more
24 persons to accomplish an unlawful purpose. It is a kind of
25 partnership in criminal purpose in which each member becomes

1 the agent or partner of every other member. Once a person
2 becomes a member of a conspiracy, that person is held legally
3 responsible for the acts of the other members done in
4 furtherance of the conspiracy, even though he was not present
5 or aware that the acts were being committed. The evidence in
6 the case need not show that the members entered into any
7 express or formal agreement, nor is it necessary that the
8 evidence show that the members stated between themselves what
9 their object or purpose was to be or the details thereof or the
10 means by which the object or purpose was to be accomplished.

11 In order to establish proof that a conspiracy existed,
12 the evidence must show beyond a reasonable doubt that the
13 members in some way or manner or through some contrivance
14 expressly or impliedly came to a mutual understanding to try to
15 accomplish a common and unlawful plan.

16 Mere similarity of conduct among various persons and
17 the fact that they may have associated with each other and may
18 have assembled together and discussed common aims and interests
19 does not necessarily establish proof of the existence of a
20 conspiracy. If you are convinced that the charged conspiracy
21 existed, then you must next determine whether the defendant was
22 a member of that conspiracy; that is, whether the defendant
23 knew at least the essential goals of the conspiracy and
24 voluntarily chose to be part of it.

25 The law does not require proof that the defendant knew

1 all of the other members of the conspiracy or knew all the
2 details about how activities were to be carried out. A person
3 may belong to a conspiracy for a brief period of time or play a
4 minor role. On the other hand, proof is not sufficient if it
5 merely shows that the defendant knew about the existence of the
6 conspiracy or was associated with members of the conspiracy.
7 Rather, the evidence must show that the defendant knowingly
8 joined the conspiracy with the intent to advance its purposes.

9 You are also required to find that interdependence
10 existed among the members of the conspiracy. This means that
11 the members intended to act for their shared mutual benefit.
12 To satisfy this element, you must conclude that the defendant
13 participated in a shared common criminal purpose, that his or
14 her actions constituted an essential and integral step toward
15 the realization of that purpose.

16 Count 1 of the Indictment charges that the defendants
17 were all members of one single conspiracy to commit the crime
18 of possession with intent to distribute and to distribute
19 methamphetamine. Sigifredo Molina Varela has argued that there
20 were really two or more separate conspiracies instead of a
21 single conspiracy charged in the Indictment. You must
22 determine whether the single conspiracy as charged in the
23 Indictment existed, and if it did, whether the defendant was a
24 member of it.

25 Proof of several separate conspiracies is not proof of

1 a single overall conspiracy charged in the Indictment unless
2 one of the several conspiracies which is proved is the single
3 conspiracy charged in the Indictment.

4 If you find that the defendant was not a member of the
5 conspiracy charged, then you must find the defendant not
6 guilty, even though the defendant may have been a member of
7 some other conspiracy. This is because proof that a defendant
8 was a member of some other conspiracy is not enough to convict.
9 But proof that a defendant was a member of some other
10 conspiracy would not prevent you from returning a guilty
11 verdict if the Government proved beyond a reasonable doubt that
12 the defendant was also a member of the conspiracy charged in
13 the Indictment.

14 In order to sustain its burden of proof in Count 1 of
15 the Indictment which, as I have said, charges the defendants
16 with conspiracy to distribute methamphetamine, the Government
17 is not required to prove that any particular overt act was
18 performed in furtherance of the conspiracy by one of the
19 members of the conspiracy. The Government is not required to
20 prove that the parties to or members of the conspiracy or
21 agreement were successful in achieving any or all of the
22 objects of the conspiracy -- of the agreement or conspiracy.

23 You are instructed that as a matter of law that
24 methamphetamine is a Schedule II controlled substance.

25 The term "to distribute" as used in these instructions

1 means to deliver or transfer possession or control of something
2 from one person to another.

3 The term "distribute" includes the sale of something
4 by one person to another. It is not necessary, however, for
5 the Government to prove that any transfer of money or other
6 thing of value occurred at the same time as or because of the
7 distribution.

8 If you find a defendant guilty of conspiracy to
9 possess with intent to distribute and to distribute
10 methamphetamine as charged in the Indictment, then you must
11 also determine the amount of methamphetamine involved in the
12 conspiracy. The substantive charge of conspiracy to possess
13 with intent to distribute and to distribute methamphetamine
14 requires the Government to prove beyond a reasonable doubt that
15 the conspiracy involved a detectable amount of methamphetamine.

16 When, as in this case, the Indictment alleges the
17 conspiracy involved more than a detectable amount of
18 methamphetamine, the Government is required to prove an amount
19 of methamphetamine beyond a reasonable doubt. You do not have
20 to find the exact amount of methamphetamine involved. On the
21 verdict form, you will be asked to mark the amount of
22 methamphetamine you find has been proved beyond a reasonable
23 doubt. Your finding must be unanimous.

24 There are two ways the Government can prove the amount
25 of methamphetamine a defendant is accountable for in the

1 conspiracy as charged in the Indictment: First, by proving the
2 amount of methamphetamine intended to be possessed with intent
3 to distribute, and/or distributed personally by a defendant
4 during the conspiracy; second is based on the legal rule that
5 all members of a conspiracy are responsible for acts committed
6 by other members as long as those acts were committed to help
7 advance the objective of the conspiracy and are acts reasonably
8 foreseeable to a defendant. Under these circumstances, the act
9 of one conspirator may be treated as the act of all. To hold a
10 defendant responsible for an amount of methamphetamine
11 possessed with intent to distribute and/or distributed by other
12 members of the conspiracy, you must find beyond a reasonable
13 doubt, 1, that a defendant was a member of the conspiracy; 2,
14 that after that defendant joined the conspiracy and while the
15 defendant was still a member of the conspiracy one or more of
16 the other members of the conspiracy possessed with intent to
17 distribute and/or distributed methamphetamine; 3, that this
18 possession with intent to distribute and/or distribute
19 methamphetamine was done in furtherance of the conspiracy; and
20 4, that the intent to possess with intent to distribute and or
21 distribute was reasonably foreseeable to the defendant.

22 The methamphetamine intended to be possessed with
23 intent to distribute and/or distributed by other members of the
24 conspiracy must be reasonably foreseen as a necessary or
25 natural consequence of the agreement. This does not require

1 proof that each coconspirator specifically agreed or knew that
2 an actual amount of methamphetamine would be possessed with
3 intent to distribute and/or distributed by all members of the
4 conspiracy, but the Government must prove that the amount of
5 methamphetamine intended to be possessed with intent to
6 distribute and/or distributed by other members of the
7 conspiracy was reasonably foreseeable to the defendants
8 Jacqueline M. Garcia and Sigifredo Molina Varela. No defendant
9 is responsible for the acts of others going beyond the
10 reasonably foreseeable scope of the conspiracy.

11 If, however, you find that the Government has proved
12 beyond a reasonable doubt the defendants could have reasonably
13 foreseen the methamphetamine intended to be possessed with
14 intent to distribute and/or distributed by other members of the
15 conspiracy, you are instructed to add those amounts to the
16 amount of methamphetamine you find beyond a reasonable doubt
17 the defendant personally intended to be possessed with intent
18 to distribute and/or distributed.

19 Count 2 of the Indictment charges that from on or
20 about March 2011 in the District of Wyoming Defendants
21 Jacqueline M. Garcia and Sigifredo Molina Varela did knowingly
22 possess firearms in furtherance of a drug trafficking crime,
23 namely, conspiracy to possess with intent to distribute and to
24 distribute methamphetamine in violation of Title 21 United
25 States Code, Section 846, as more fully alleged in Count 1 of

1 the Indictment, in violation of Title 18 United States Code,
2 Section 924, Subsection (c)(1)(A).

3 The Defendants Jacqueline M. Garcia and Sigifredo
4 Molina Varela are charged in Count 2 with a violation of Title
5 18 United States Code, Section 924(c)(1). This law makes it a
6 crime to possess a firearm in furtherance of a drug trafficking
7 crime. To find the defendants guilty of this crime, you must
8 be convinced that the Government has proved each of the
9 following beyond a reasonable doubt:

10 First, the defendant committed the crime of conspiracy
11 to distribute methamphetamine as charged in Count 1 of the
12 indictment which is a drug trafficking crime;

13 Second, the defendant possessed a firearm in
14 furtherance of this crime.

15 If the Government fails to prove any of these elements
16 beyond a reasonable doubt, you should find the defendant not
17 guilty. If, on the other hand, the Government proves each of
18 the elements by proof beyond a reasonable doubt, you should
19 find the defendant guilty.

20 You are reminded that you must separately consider the
21 evidence against each defendant on each count and return a
22 separate verdict for each defendant -- or as to each defendant.

23 The term "firearm" means any weapon which will or is
24 designed to or may readily be converted to expel a projectile
25 by the action of an explosive. The term "firearm" also

1 includes the frame or receiver of any such weapon or any
2 firearm muffler or firearm silencer or destructive device.

3 You are instructed possession in furtherance of means
4 for the purpose of assisting in, promoting, accomplishing,
5 advancing or achieving the goal or objective of the underlying
6 offense.

7 Mere possession of a firearm at the scene is not
8 enough to find possession in furtherance of a drug trafficking
9 crime because the firearm's presence may be coincidental or
10 entirely unrelated to the underlying crime.

11 Some factors that may help in determining whether
12 possession of a firearm furthers, advances or helps advance a
13 drug trafficking crime include, but are not limited to, one,
14 the type of criminal activity that is being conducted; two, the
15 accessibility of the firearm; three, the type of firearm; four,
16 whether the firearm is stolen; five, the circumstances
17 surrounding the acquisition of the firearm; six, the status of
18 the possession, legitimate or illegitimate, or illegal; seven,
19 whether the firearm is loaded; eight, the time and
20 circumstances under which the firearm is found; and nine,
21 proximity to drugs or drug profits.

22 The jury must find a nexus between a defendant's
23 possession of the firearm and the drug trafficking offense
24 after careful consideration of all evidence that has been
25 offered during the trial of this matter.

1 You are the sole judges of the facts based upon the
2 evidence received in the case.

3 I am going to read the possession instruction again to
4 you. Possession, as that term is used in this case, may be of
5 two kinds, actual possession and constructive possession. A
6 person who knowingly has direct physical control over a thing
7 at a given time is in actual possession of it. A person who,
8 although not in actual possession knowingly has both the power
9 and the intention at a given time to exercise dominion or
10 control over a thing, either directly or through another person
11 or persons, is in constructive possession of it.

12 Possession may be sole or joint. If one person alone
13 has actual or constructive possession of a thing, possession is
14 sole. If two or more persons share actual or constructive
15 possession of a thing, possession is joint. You may find that
16 the element of possession as that term is used in these
17 instructions is present if you find beyond a reasonable doubt
18 that a defendant had actual or constructive possession either
19 alone or jointly with others.

20 Those are the initial instructions I give to you this
21 morning. Each of the parties now has the opportunity to
22 present their closing statement helping you to analyze and
23 understand the evidence that has been presented in this case.

24 MR. HEALY: Your Honor, may we approach briefly about
25 the instructions?

1 THE COURT: The Government will proceed first with
2 their opening statement (sic) to you because they have the
3 burden of proof and they may following the instructions --
4 follow the arguments of the defendant with a brief rebuttal and
5 reserve a portion of their time to do so.

6 (At sidebar.)

7 MR. HEALY: Your Honor, I didn't see Instruction
8 No. -- I didn't hear Instruction No. 39 which came right after
9 the factors to be considered and before the constructive and
10 actual possession.

11 THE COURT: I gave it.

12 MR. HEALY: Okay. I'm sorry.

13 (Sidebar ended.)

14 MR. HEALY: May it please the Court, Counsel.

15 THE COURT: Mr. Healy.

16 MR. HEALY: Ladies and gentlemen, you've heard a lot
17 about a lot of things that you probably haven't heard a lot
18 about in your lives before the last week. I want to talk to
19 you a little bit about this term of conspiracy. It has always
20 been helpful for me in explaining conspiracies and thinking
21 about them to think of one of my favorite things to do which is
22 reading, reading novels. And I always think of a conspiracy as
23 the book, the novel itself, and the evidence and the testimony
24 that you hear, the testimony from witnesses, the evidence as
25 collected and brought before you, they're chapters in this

1 book. Some of those chapters as we all know from reading, we
2 read right through and we think it is great and it captures us.
3 Some of it in the book gets a little slow, but they're all
4 critical to an understanding of the entire book. So I want you
5 to think about that as you hear about the evidence.

6 And there's another thing I want you to think about,
7 too. One of defense counsel in his opening statement mentioned
8 that you would hear the Government's version of the truth.
9 Now, this bothers me, this idea of truth being malleable or
10 subject to chance. But ultimately what the Government thinks
11 is the truth or what defense counsel thinks is the truth.
12 Doesn't matter really what even Judge Johnson thinks doesn't
13 matter.

14 You are the sole judges of the truth and the
15 credibility of the witnesses. The instruction says justice
16 through trial by jury depends upon the willingness of each
17 juror to seek the truth. So what my opinion of the truth is
18 doesn't matter. Your opinion matters.

19 So what kind of story do we have? What is this novel
20 all about?

21 You've heard a story about these individuals in
22 particular. It is a sad story. The courtroom was moved by
23 some of the testimony. It is a detailed story. Details are
24 important, very important. And it's ultimately and I think
25 unavoidably a question of guilt for Jaqueline Garcia and Sigi

1 Molina.

2 MR. JUBIN: I object, Your Honor. Personal
3 expressions of guilt are improper, and I would ask the jury be
4 so instructed.

5 THE COURT: That is accurate and you will disregard
6 any personal opinion from any of the counsel concerning what
7 their belief is in that regard.

8 MR. HEALY: Ladies and gentlemen, let me just be very
9 specific and tell you that this is the direction of the
10 evidence, not any personal opinion. I just spent a
11 considerable amount of time detailing that and stressing the
12 importance of it.

13 Okay. You will be looking at two types of evidence,
14 direct and circumstantial. And the law makes really no
15 distinction between the two. Direct evidence is testimony that
16 you will hear from -- that you heard from the stand: Kyle
17 Carothers, Blankenship, Brodie, Rose, Chris McDonald, Troy
18 Hipsag. That's direct evidence, although the testimony -- and
19 we will talk about this in a moment, the testimony of Troy
20 Hipsag and Chris McDonald. There was some circumstantial
21 evidence involved in that, too, where one fact or one
22 reasonable inference leads to an ultimate conclusion.

23 So you will -- you will be hearing all of those things
24 briefly in my closing.

25 So Count 2 is the gun count, and I chose to start with

1 this rather than the -- I guess the logical starting point
2 which would be Count 1 because evidence in Count 2 demonstrates
3 in part some of the proof required for Count 1. Let me
4 explain.

5 Okay. Here are the elements of a 924(c). First, you
6 need to find that the defendants, both of them, Mr. Molina and
7 Ms. Garcia, committed the crime charged in Count 1, conspiracy
8 with intent to distribute methamphetamine.

9 And second, you need to determine beyond a reasonable
10 doubt that the defendants possessed firearms in furtherance of
11 the crime. Okay. The Judge already read twice to you
12 possession, actual possession, you hold it in your hand.
13 Constructive possession, you have the ability and the intent to
14 take it if you want it. You can read those instructions in
15 more detail.

16 Now this is important, this instruction on the factors
17 that help in determining whether possession of a firearm
18 furthers, advances or helps advance a drug crime, these are
19 some of the factors, ladies and gentlemen. It is up to you
20 ultimately, as I've said, to make that decision. These are
21 some of the factors that you can consider, but one of the most
22 important here is the circumstances surrounding the acquisition
23 of the firearm.

24 You heard with respect to three of the firearms in
25 this case from Heidi Blankenship, Robert Brodie. Heidi

1 Blankenship said that she had a .380 that she believed didn't
2 work somehow, which is another one of the factors that you can
3 consider. You don't have to, but look at the definition of a
4 firearm. She said that she had a .380 and she had a pretty
5 considerable drug debt. She gave that .380 to Jackie Garcia.
6 And at first she said she gave it to Garcia and Molina. When
7 asked to specify, she said, "Okay, I gave it to Garcia."

8 Now, again, you judge the credibility of the witnesses
9 there. There's no question about that. And you judge
10 Blankenship's credibility. It was not easy, as it was
11 demonstrated in this courtroom, for her to testify against
12 Garcia and Molina. She did it anyway. She certainly had
13 motive in that she wanted a lesser sentence, but she testified
14 against them and she talked about this gun that she traded to
15 Jackie Garcia for a gun debt.

16 There was also testimony that that gun, or at least
17 another .380, was later given to Raul by Mr. Molina. Now with
18 respect to Mr. Brodie in particular, he testified that there
19 were two firearms that were exchanged to Mr. Molina that he did
20 personally and this is outside of the testimony, again, of Kyle
21 Carothers who said he saw a Tech 9 and a .22 and a .40 caliber
22 and a 9 millimeter, or Whitney Rose who said she saw an AK-type
23 gun and another gun that was about this size (indicating).

24 But Mr. Brodie said that there were two occasions when
25 he gave guns for drugs. One, personally, to help pay off a

1 debt, and the second time he said it was a .40 caliber that he
2 gave to Mr. Molina to -- to middle the purchase of a gram of
3 methamphetamine for Nate last name unknown who was waiting for
4 him at the Shell station. And he told you -- he told you, he
5 said, "I did not talk about that in my proffer. I didn't
6 mention it in my proffer. I mentioned my possession of guns
7 and my trading of a gun to Mr. Molina, but I didn't talk about
8 that one. I just didn't recall it until now."

9 And then he said, of interest, "It's difficult" --
10 paraphrasing -- "It's hard for me to get up here and put this
11 stuff on them," referring to Mr. Molina and Ms. Garcia. He
12 wasn't happy to be testifying.

13 So -- so you have all these factors. And again, this
14 is a nonexclusive list. You can consider the circumstances
15 surrounding the acquisition of the firearm. The type of the
16 criminal activity being conducted, this methamphetamine being
17 traded back and forth.

18 The accessibility of the firearms. Consider this open
19 safe upstairs where all these drug transactions took place and
20 the guns were always available; not wrapped in plastic, but in
21 the safes, okay.

22 The type of firearms: Pistols, a Tech 9, all of these
23 things. You go through each of these.

24 Proximity to drugs or drug profits. Remember,
25 don't -- don't let -- don't let yourselves be stuck in a

1 certain point in time. That is not what a conspiracy is. It
2 runs the course of time. Remember.

3 So when you're -- you're told to consider that the
4 firearm is found on January 16th, 2013. We're only close to a
5 little bit of methamphetamine, and no money, no ledgers, that's
6 one point in time. That's a single chapter, ladies and
7 gentlemen. Think about the story. And all of the people who
8 were up in that bedroom buying methamphetamine, seeing the
9 guns, trading guns for methamphetamine. Think of the story.

10 Okay. Let's go to Count 1. Again, the Court has read
11 this instruction to you. I'm not going to go through the
12 actual count in any detail other than to say the Government's
13 required to prove these elements. Nothing more. The
14 Government must prove these elements beyond a reasonable doubt.

15 When you think about the elements of conspiring to
16 possess with intent to distribute, go through this. There's
17 no -- there's no evidence other than that all of this happened
18 in Gillette. That's -- that's the easy one for you, the
19 District of Wyoming. These others are going to require careful
20 consideration of the testimony and the witnesses and the
21 evidence.

22 Interdependence: Supplier. Supplier takes
23 methamphetamine to one tier below. One tier below gives the
24 methamphetamine for money to others on a front. That
25 methamphetamine is then distributed in smaller amounts to other

1 people on a front and partly on cash basis. That
2 methamphetamine is then distributed to users. Users take that
3 money, give it to the next level, give it to the next level,
4 and so on. That is interdependence.

5 Consider the instruction, too, on proving weight, and
6 I will go back. No. 6 of these elements is very important.
7 They're all equally important, but No. 6, the overall scope of
8 the conspiracy involves 500 grams or more of a mixture or
9 substance containing a detectable amount of methamphetamine.
10 You have to determine that for each defendant. So you need to
11 think about the evidence that came in with respect to that.

12 But when you do that, you are allowed under this
13 second factor is based on the legal rule that all members of a
14 conspiracy are responsible for acts committed by the other
15 members as long as those acts were committed to help advance
16 the objective of the conspiracy and are acts reasonably
17 foreseeable to the defendant.

18 So when people are conspiring -- if, for example, Kyle
19 Carothers knows that 10 ounces is coming in on occasion to the
20 Garcia Molina home and you believe that all of the other
21 elements are met in this conspiracy, then that weight can be
22 reasonably attributable to Kyle Carothers. That's an example
23 of what is reasonably foreseeable to someone.

24 Okay. Again, this issue of the truth that keeps
25 coming up. I put up a quote from one of my favorite writers,

1 Mark Twain: "If you tell the truth, you don't have to remember
2 anything." I want you to think about that as we review the
3 testimony of these witnesses: "If you tell the truth, you
4 don't have to remember anything."

5 Okay. Heidi Blankenship. She has been a long-time
6 friend of Mr. Molina and Ms. Garcia. She said she began buying
7 from Garcia in 2010 in larger amounts. Before that she
8 admitted to you that she sold methamphetamine to Ms. Garcia and
9 Mr. Molina on occasion.

10 She said she was buying quarter-ounce amounts about
11 every other week from the early part of 2010 until her arrest
12 in September of 2011. She talked about Robert Brodie helping
13 her to distribute. She talked about the gun she gave to
14 Ms. Garcia to help pay off her debt. And then, interestingly,
15 in cross-examination when I believe Mr. Fleener was asking her
16 about how when she had first spoke about the gun in her proffer
17 she said she gave it to Garcia and Molina, and her statement,
18 again, paraphrasing, was this to me, "They are a unit. They're
19 a couple. They come together."

20 Okay. Now, Robert Brodie's statement isn't that much
21 different. He was clearly a smaller role in this little
22 agreement between Mr. Molina, Ms. Garcia and Heidi Blankenship.
23 He was a driver at first. Then a girlfriend -- he told you
24 that at first he wasn't trusted to even go into the house. He
25 said to you that they would go into the house with no

1 methamphetamine. He would be downstairs. Ms. Blankenship
2 would go upstairs with Ms. Garcia, and she would come back down
3 with methamphetamine.

4 He was never up in that room until -- until after her
5 arrest, but again, circumstantial evidence leading to
6 reasonable inferences.

7 So what happens after Ms. Blankenship's arrest? He
8 gets involved. And when he gets involved, to make some money
9 with eightballs here and there, he goes directly to
10 Mr. Molina. And he describes, then, because he's seen it at
11 this point, what he sees: The upstairs bedroom, the scales,
12 the meth.

13 And then you have Whitney Rose. Whitney Rose
14 testifies that she's distributing methamphetamine. She's an
15 addict. She gives you all of the -- all of the information out
16 front about her criminal history and about her life. She was
17 even asked by one of these defense counsels about her
18 relationship when she was 12 and she talked about that. She
19 tells you that she and Kyle Carothers were buying an ounce a
20 day from the defendants until there was too much traffic. And
21 she -- she gave -- interestingly enough, she gave another story
22 like Mr. Brodie. There were two people that Molina and Garcia
23 trusted closely, Ms. Blankenship and Mr. Carothers. It wasn't
24 until they had met Mr. Brodie and Ms. Rose, the significant
25 others, and gained some trust in them that they let these

1 people into their home.

2 So Ms. Rose told you the same thing. She told you
3 that after this ounce a day, it was 2 to 3 ounces a day, every
4 other couple days or ever how long it took them to get rid of
5 it, just so that there wasn't as much traffic at the Garcia
6 Molina home. She saw dope in the safe in the upper bedroom.

7 Garcia told her that she flushed 3 eightballs down the
8 toilet before DCI could get in. That's an interesting point
9 that is made. Garcia told her that she flushed 2 to 3
10 eightballs down the toilet before DCI could get in. So
11 Ms. Rose knew from Ms. Garcia that DCI had a tough time getting
12 into that house and during that period of time I believe Agent
13 McDonald testified that a couple minutes, two minutes, there
14 was time to do a lot of things. And this, according to
15 Ms. Rose, this is what Ms. Garcia said she did.

16 She talked about this time that she saw Molina and
17 Garcia's source where they brought 10 ounces to the house, and
18 she described it in almost exactly the same detail as
19 Mr. Carothers. She talked about seeing the rifles. She talks
20 about all the things; again, relationships, trust, where the
21 dope was kept, video cameras, all of these things, the source.
22 And Mr. Brodie mentioned that, that a source would show up and
23 drive into the garage and the -- Garcia and Molina wouldn't
24 have methamphetamine before they got there and when they left,
25 they would have it.

1 So all of these things are, are contributing to all of
2 these stories that are told by each of the defendants.

3 And then we have Kyle Carothers. Kyle Carothers got
4 up here, and he talked about his life. He talked about how
5 he -- he had to graduate from high school early because his
6 mother was in prison and his father had left him. He talked
7 about how while he was in high school, in junior high, he had
8 met the Garcia family and the Molina family, those children,
9 and he had actually even dated one of the -- of the daughters.
10 And during that relationship things occurred and eventually by
11 the time he was 15 he was using methamphetamine with Ms.
12 Garcia, first with Ms. Garcia and then later with Mr. Molina.

13 He told you that before he started dating Whitney Rose
14 who hooked him up with his source -- his customer base, he was
15 buying eightballs in August and September of 2011. But by
16 November of 2011, he was buying an ounce a day until January
17 and March of 2012, and then after March, 2 ounces every other
18 day or so. And he gave you the same price that Whitney Rose
19 gave you, 2500 to 2800 an ounce.

20 And here's another thing. If Whitney Rose and Kyle
21 Carothers were simply interested in getting Mr. Molina and
22 Ms. Garcia in trouble, wouldn't they just have said that that
23 was their only source throughout that entire time? No, they
24 both recall a period of time. Mr. Carothers says between
25 January and March. Ms. Rose says she thinks in January, when

1 Mr. Molina and Ms. Garcia for whatever reason they both had --
2 I think Ms. Rose said that they wanted to quit, the defendants
3 wanted to quit. Mr. Carothers's explanation was a little more
4 practical, the source was in Mexico, but for whatever reason,
5 they stopped.

6 THE CLERK: Ten minutes, Counsel.

7 MR. HEALY: Thank you. They needed another source.
8 So with the help of Mr. Molina and Ms. Garcia's money, they
9 found other sources. Chris George drove them to -- drove Kyle
10 to Denver on one occasion. Mike Adams drove him down with some
11 of Mr. Molina's money on another occasion. They -- Adams and
12 Carothers also drove to Casper.

13 And there was no evidence submitted to you or
14 suggested to you that there was money provided by -- again, you
15 will be the ultimate judges of that and whether the facts
16 recall the way that I'm telling you, but they didn't -- Mr.
17 Carothers never said that money was going to -- from Mr. Molina
18 to Casper. He told you it went to Denver.

19 He talked to you about the firearms he saw, a Tech 9;
20 a .380, the same firearm that Blankenship and Brodie talked
21 about; a 9 millimeter High Point; the .40 caliber, the firearm
22 that Mr. Brodie talks about; the .22 pistol, the firearm that
23 Mr. Brodie talks about. Talks about all of these.

24 And then finally, we have this interviewed confession
25 with Mr. Molina, and all of these things that Carothers and

1 Rose and Brodie and Blankenship are telling you about
2 Mr. Molina are ultimately confirmed by him.

3 He has a source named Raul. You saw from the -- the
4 January 16, 2013 search, it was still in his wallet, all of
5 those numbers and Raoul's information.

6 He told you the prices that he was charging. He told
7 you about this trip to Denver for which he contributed money
8 with Mr. Adams and Mr. Carothers.

9 Over the course of the next several years he said that
10 he received 10 to 20 shipments. Three were 10 ounces, so if
11 you think about this 500 grams you have it right there, and the
12 rest were 5 ounces. Even at a minimum, even if you take the
13 minimum, 10 ounces -- or ten trips and three of those are 10
14 ounces, element 6 is met.

15 He said he distributed to Carothers and Rose in ounce
16 quantities. He distributed to Brodie and Blankenship in
17 quarter-ounce quantities. He distributed to Mike Kain whose
18 number is found at the home on January 16th, remember six
19 months, seven months, eight months after the arrest of his
20 primary distributors and he admitted to trading methamphetamine
21 to others for guns.

22 So, ladies and gentlemen, I submit to you that all of
23 that evidence, direct and circumstantial -- all of that
24 evidence that you will consider, the entire story, this novel
25 that was put together over the last week for you,

1 overwhelmingly demonstrates the guilt of Jackie Garcia and Sigi
2 Molina for conspiring to possess with intent to distribute over
3 500 grams of methamphetamine and possessing a firearm in
4 furtherance of a drug trafficking count, Count 1. Thank you.

5 MR. FLEENER: May it please the Court, Mr. Healy,
6 Mr. Jubin.

7 THE COURT: Mr. Fleener.

8 MR. FLEENER: Ladies and gentlemen, we appreciate your
9 time over the last few days. I don't expect my argument to be
10 as long as Mr. Healy's, but I'm going to start by showing the
11 instruction the Court gave you: A separate crime or offense is
12 charged against the defendant in each count of the Indictment.
13 Each offense and the evidence pertaining to it should be
14 considered separately. The fact you may find the accused
15 guilty or not guilty of one of the offenses charged should not
16 control your verdict as to any other offense.

17 If you recall during my opening statement, I mentioned
18 that one of the concerns I had in this case was the Government
19 sort of lumping people together, lumping Jackie and Sigi, Sigi
20 and Jackie, putting what the truth means aside. The word that
21 looked key, at least to the Government's presentation of its
22 evidence, was the word "they." And Mr. Healy is a good lawyer,
23 smart guy, good friend of mine. So you can't blame him for
24 this, but if you notice whenever, every time he would ask the
25 witness a question, he would include the word "they": So what

1 did they do next, what happened when they did X, Y, Z,
2 regardless of what the answer was.

3 Even when I would ask, "Did you ever see Sigi" --
4 excuse me -- "Jackie Garcia give any drugs to anybody?" And
5 the answer was always no, on redirect the word "they" would
6 come up. "So after Jackie and Sigi gave drugs to so-and-so,
7 after they gave drugs to so-and-so, what happened next?" And
8 that's what you do, you use the word "they" because you don't
9 want -- if you're the United States in this case, you don't
10 want -- you don't want the jury to follow that particular
11 instruction and look at individual responsibility.

12 Now, Mr. Healy is absolutely right, when you're
13 dealing with some facts may affect both players, there's this
14 concept of reasonable foreseeability as far as of the actions
15 of one member of the conspiracy and how it may affect another
16 member of the conspiracy and you will have a long, detailed
17 instruction to take back with you and read, but the word "they"
18 became very important for the United States.

19 And like Mr. Healy, I'm going to start with the guns
20 and work my way backwards, too, and I guess it is probably just
21 a coincidence, his is a PowerPoint presentation and mine was
22 drafted last night and we ended up starting at the same count.
23 And I am going to start at the guns as well.

24 And while I mean no disrespect to my colleagues on the
25 United States side, they were a little dirty on the guns. And

1 I'm showing you Government Exhibit 30 which they showed over
2 and over and over and over and over again. And remember that?
3 That was the gun. They even had the photo -- I don't remember
4 what exhibit it was -- where the agent circled the chamber to
5 indicate that there was a round in there?

6 And throughout four days of testimony you, I assume,
7 assumed the same thing that would be understandable which is
8 that when the agent found this particular firearm, this is what
9 it looked like, right? It was a weapon with a round in the
10 chamber sitting there somewhere in a safe. And it wasn't
11 until -- what's interesting and another aspect -- look at
12 this -- look at this exhibit right here where you see the --
13 sort of the piece of whatever, that no-excuses piece of paper
14 there, bumper sticker, whatever. But for four days you thought
15 that there was a weapon outside a holster that had a round
16 jammed in the chamber.

17 And Agent Budd testified that he found Ms. Garcia up
18 in that upper bedroom, and you would think that Ms. Garcia had
19 taken a round, tried to load it in that chamber and was trying
20 to shoot somebody. And that's what he wanted you to think.
21 And what did we have to do the very last day of trial? I had
22 to offer this particular exhibit. Remember this one? The only
23 exhibit offered by either of us, Defendant's Exhibit A, and
24 what is that? There's the no-excuses bumper sticker. And
25 there's the weapon in the holster. They weren't going to tell

1 you about the weapon in the holster.

2 And I got mad and I stuttered a bit and then Agent
3 Budd and I butted heads a bit and we quit. But what does that
4 show you? They wanted you to think that the gun was sitting in
5 the safe or sitting outside the safe with a bullet lodged in
6 the chamber and that you would as people who have firearms and
7 as their police officers testified, when you're -- to have a
8 round in the chamber or to have a round stuck sideways in the
9 chamber, looked like someone was trying to jam one in.

10 Well, it wasn't true because the gun was sitting there
11 in a holster the whole time, meaning that -- and you were never
12 told that, again, until we made it clear. You were led to
13 believe the gun was outside the holster. And is that relevant?
14 Absolutely it is relevant because it is common sense.

15 What happened here was -- well, one thing we don't
16 know. We have no idea what happened. What we know that didn't
17 happen. We know that Jackie didn't take the gun and put a
18 bullet in the chamber as she was protecting her drug source or
19 going to kill law enforcement or whatever other insinuation the
20 United States makes. We know that's not the case because why?
21 The gun is sitting in the holster. Terrible.

22 And they were caught on it, and there's really no
23 explanation for it other than oops, we got caught. But it
24 shows the -- the -- how far you will go to get a conviction in
25 a certain count. And in this case it is just how far they went

1 to get a conviction on the gun count. They went so far as to
2 not offer in evidence the one piece of evidence which shows the
3 gun in the condition it was when the law enforcement officer
4 entered the house. They didn't offer that. They offered the
5 photo of after the law enforcement officer took the gun out of
6 the holster and laid it down to make it look like there was a
7 readily available, loaded firearm.

8 And it is not the first time they did that. I mean,
9 remember Government Exhibit 50. This was the firearm that
10 wasn't found anywhere. They just offered that in evidence
11 because it is a scary gun. And then you've got Government
12 Exhibit 53. This was interesting. These are the -- these are
13 the -- the jacks to raise the car. And again, this is just a
14 demonstrative aid. Actually, it wasn't offered into evidence.
15 It was just used as a demonstrative aid to show what the jack
16 looked like if it was hollowed out.

17 Interestingly enough they didn't find -- well, they
18 found jacks in Mr. Molina's garage. They were all functioning
19 jacks, so, you know, that never came up as well.

20 Remember -- recall Heidi Blankenship's testimony about
21 the firearm. First, you have to believe it beyond any and all
22 reasonable doubt. Any and all reasonable doubt. Not any and
23 all doubt. But any and all reasonable doubt you have to
24 believe that Heidi Blankenship somehow gave some firearm to
25 Jackie Garcia.

1 Now, this comes after she told the United States that
2 she gave -- she says, "I gave a firearm to Sigi and Jackie."
3 While Mr. Healy in his closing, you know, used the phrase that
4 I considered them a couple or whatever it was to sort of tie
5 them together, I'm emphasizing that as well. It shows what the
6 various witnesses, unless you actually get in there and break
7 it down, what did you give to whom, who gave -- which
8 particular defendant gave you what, which is absolutely
9 important in a case like this -- unless you dig deep in that,
10 it is they, they, they, they, they.

11 Well, as Ms. Blankenship decides to try to pin a
12 firearm on Jackie Garcia, first, you have to believe her beyond
13 a reasonable doubt. Then there's the question -- and you will
14 look at Instruction 38 and you will -- when you're handed the
15 jury instructions as to what a firearm is.

16 This mystery gun, first of all, didn't exist because
17 no one found it anywhere. There was no 38 -- .380, rather, in
18 their home. She said that it was broken, something was broken
19 about it, so if the gun was never seized by anybody, was found
20 inside -- if it was actually -- if it was actually given to
21 Ms. Garcia, there's a question as to whether it is a
22 functioning firearm. We don't know what condition it was.

23 And while the firearm doesn't have to -- you don't
24 have to have a fully functioning firearm in order to be -- to
25 be defined as having a firearm, you will read the Instruction

1 38 and determine for yourselves whether you can -- whether you
2 can find beyond any and all reasonable doubt that whatever it
3 is that Ms. Blankenship may or may not have given to Ms. Garcia
4 satisfies that definition.

5 And we are comfortable that you're not going to be
6 able to find that.

7 And that's even -- and even then you're still stuck
8 with the fact that Sigi Molina told the police how he got guns,
9 how he did this, how he did that. Sigi talked about the guns.
10 These are -- if there are guns available, one thing is clear,
11 isn't it? They're Sigi's guns. They're not Jackie's guns.
12 Don't put guns in Jackie's hands. No fingerprints of Jackie
13 Garcia on any round, on any drug bag. There's no fingerprints
14 at all in this case one little bit. But there certainly aren't
15 Jackie's fingerprints on anything. These guns, whatever guns
16 were found, were not found, the mystery guns were Sigi's guns
17 and that shouldn't be that difficult.

18 And the next question is whether they were being held
19 or used in furtherance of a drug trafficking crime. And you
20 will look at that instruction carefully. I'm convinced the
21 Court will give you that instruction. At the close of your
22 deliberations we're confident that you should be able to
23 dispense with this count fairly quickly and find Ms. Garcia not
24 guilty of possession of firearms in furtherance of a drug
25 trafficking crime.

1 I can't speak for Mr. Molina. That's Mr. Jubin's job.
2 But as for Ms. Garcia, she's not guilty of Count 2, absolutely
3 no way.

4 Going to the drugs, it was interesting because is
5 there any doubt that Jackie Garcia -- well, let's step back.
6 The Government presented four, I guess, corroborating
7 witnesses. And they're all drug addicts. And that's terrible
8 and -- but it is what it is. And I would submit, and I don't
9 think you will find any objection from anybody in the
10 courthouse that Sigi Molina and Jackie Garcia are also drug
11 addicts. They're really no different than anybody else in this
12 process except they're sitting at this table while the other
13 witnesses were testifying from the -- from the stand.

14 But when you're looking at drug quantities -- and Mr.
15 Healy is correct and the instructions are absolutely clear, how
16 you do it in this case in a drug conspiracy it is a two-part
17 test. And you will have the instruction that describes the
18 process that you should take when you go back and deliberate.
19 The two-part test, first you look at the drugs -- if I misstate
20 the actual instruction, please follow the instruction. You
21 folks know that.

22 Two parts: First you look at the drugs the person
23 actually possessed with the intent to distribute. Then you add
24 to that amount whatever drugs may have been possessed in the
25 entire conspiracy that were possessed -- that were reasonably

1 foreseeable to that particular defendant. And we are all going
2 to go back -- you all are going to go back and debate what
3 reasonable foreseeability means.

4 And it is important in this case and we know why.
5 Because even if you take all of the Government's evidence in
6 its most -- and don't really contest it at all. And you look
7 at the amount of drugs that Jackie Garcia had in her possession
8 that a witness said went into some -- went to them, you're
9 really stuck with 1.8 gram controlled buy back in 2011 that
10 Jimmy Hernandez person we never heard from, but let's just
11 assume that's true. You have 1.8 grams.

12 Then you have Heidi Blankenship, and what did Heidi
13 say? She testified a couple -- and your memories and your
14 notes are the best -- the best recollection of all of us. My
15 notes were different than what Mr. Healy had in his that he
16 argued as far as the timing of these various events. My notes,
17 I had -- I believe in Mr. Healy's notes he had Heidi
18 Blankenship getting a quarter of an ounce for about 16 months
19 from 2010 till the end of 2011. I had it from the middle of
20 2011 to the beginning of 2012, about six months. But the
21 amounts were the same.

22 So let's assume Heidi Blankenship is telling the God's
23 honest truth which is that she got between an eightball and
24 eighth of an ounce, 3 and a half grams, and a quarter of an
25 ounce, 7 grams, every week from Jackie Garcia.

1 If that's the case, you're talking about roughly an
2 ounce a month, which is 26 and a half grams a month. My math
3 puts it at 140 grams, six months, times 26 and a half. Mr.
4 Healy's math, even if you use his math, you're still well under
5 500 grams.

6 So that's the methamphetamine that even if you believe
7 the witnesses, that's not -- that's not controverted by other
8 witness' testimony. I'm going to give you an example. Even if
9 you believe just sort of the uncontroverted testimony of the
10 witnesses, you end up with less than 500 grams, well less than
11 500 grams. You probably end up greater than 50 grams, which is
12 one of the questions you're going to be asked on the special
13 verdict form. You're going to have to find -- if you find Ms.
14 Garcia, or Mr. Molina, for that matter, guilty of the drug
15 conspiracy is Ms. Garcia less than 50 grams, more than 50 grams
16 or more than 500 grams, and you're going to have to choose
17 where in this area they fall.

18 But if you look at the drugs that were directly placed
19 by Ms. Blankenship or the 1.8 grams by Mr. Hernandez, you're
20 still well under, well under 500 grams. You're above 50 but
21 under 500 for Ms. Garcia.

22 As far as, you know, Kyle Carothers goes, the
23 interesting aspect is Kyle Carothers was a "they" guy and he
24 was -- and he -- well, his answers were "they," Jackie and Sigi
25 were "they." The specifics, specificities of where he got the

1 drugs never came out. It was a "they." But you can figure out
2 where he got his drugs by listening to whom? His girlfriend.
3 And that's why when Whitney Rose is up testifying I asked
4 Whitney Rose, "Did you ever see Kyle get any drugs from Jackie
5 Garcia?" Of course the answer was no. Kyle would disappear
6 with Sigi -- no disrespect to Mr. Molina -- come back with
7 drugs.

8 So Kyle, Kyle Carothers' drugs comes from Sigi. If
9 you want to believe Heidi Blankenship beyond any reasonable
10 doubt they come from Jackie. And the amounts are well, well,
11 well under 500 grams.

12 What's interesting about this case, really, when you
13 look at the -- I mean, it actually came -- it played out in a
14 fairly easy to understand -- I appreciate the story of the
15 book. That's -- that makes good sense. The witness' testimony
16 played out in a fairly easy to understand way. You have two
17 sets of girlfriends and boyfriends. You have Kyle and Whitney.
18 You have Heidi and Brodie. And the interesting thing about
19 that and one thing that I would argue certainly helps
20 Ms. Garcia is that you're able to look at -- Brodie is the
21 boyfriend. Brodie is essentially Whitney. You have Kyle
22 buying drugs and you have Whitney -- excuse me. You have Kyle
23 and you have Heidi getting drugs and you have their boyfriend
24 and girlfriend just sort of watching.

25 Now Brodie gets involved a little bit later on.

1 Whitney doesn't necessarily get involved at all, but Whitney is
2 certainly able to provide some context and understanding as to
3 what Kyle is doing. And if you listen to Whitney, Kyle's
4 getting his drugs from Sigi. Assuming he's getting any drugs
5 at all, he's getting them from Sigi, that's what she says. Any
6 money to Jackie? No, any drugs from Jackie? No. Did you see
7 Kyle -- or when I asked Whitney, "Did you either get drugs or
8 give money to Kyle -- to Jackie?" The answer was no.

9 I asked her if you saw Kyle either give money or get
10 drugs from Jackie, the answer was no. Kyle was getting his
11 drugs from Sigi. We know that because we have Whitney, who has
12 really no dog in the fight, watching it and observing this.

13 It is the same for Brodie and Heidi, isn't it, where
14 you have Heidi, who apparently was getting drugs from somebody
15 in that house. Now Heidi says she was getting her drugs from
16 Jackie. Of course Brodie said he never saw Jackie give Heidi
17 any drugs either, so, again, you're going to have to -- even to
18 convict Jackie of the -- even to convict Jackie of the
19 conspiracy and put the amount of drugs that Heidi was getting,
20 you're going to have to disregard the testimony of Brodie who
21 said, "I -- I watched her. She wasn't getting drugs from
22 Jackie."

23 But it made -- it makes it easy to understand, because
24 you have each boyfriend/girlfriend sort of corroborating or
25 explaining the "they."

1 At the end of the day, what this case -- as far as
2 Ms. Garcia goes, again, we're confident on the 924(c) charge.
3 She didn't possess any firearms in furtherance of a drug
4 trafficking crime. Not close. And she certainly didn't do it
5 beyond any and all reasonable doubt.

6 As far as the drug conspiracy, it is a tougher call,
7 and it may not be as tough a call to convict her, to be honest.
8 It may be a tough call to figure out what kind of drug quantity
9 am I going to attribute to Jackie Garcia in this process? And
10 you're going to have to rely on the concept of reasonable
11 foreseeability. We fully expect that's what you will be doing
12 in the deliberation room.

13 Remember, remember, one of the instructions the Judge
14 gave early on, and if I'm not mistaken he gave it again,
15 argument isn't evidence. Sometimes we -- the lawyers, we like
16 to think it is and I like to think we're more important than we
17 actually are, but argument isn't evidence. So all the argument
18 about reasonable foreseeability and what is reasonably
19 foreseeable and what isn't reasonably foreseeable, again that's
20 just argument. Ask yourself this question: What evidence did
21 the United States present -- evidence, not argument -- what
22 evidence did the United States present that Sigi Molina's drugs
23 are reasonably foreseeable to Jackie Garcia? Not argument.
24 Evidence.

25 And Mr. Healy gets to go again. I'm sure he's going

1 to come up with something, and I don't get a chance to respond.
2 He gets the final word. It is his burden and that's how it is
3 supposed to be. Keep that in mind. Not argument about
4 reasonable foreseeability, but evidence as to reasonable
5 foreseeability. Because what we do know is this: Sigi told
6 the police, "I got the guns." Sigi told the police, "I bought
7 drugs and I sold drugs."

8 We would ask that you listen to the Court's
9 instructions. We appreciate your time over this last week.
10 You have been very, very patient. And render an appropriate
11 and just verdict in this case. As for Ms. Garcia it is not
12 guilty on the 924 -- the federal gun count that you will see.
13 And it is also not guilty on the conspiracy charged as far as
14 the drugs for -- as far as the drugs as to Ms. Garcia. If you
15 do believe that she's guilty of a drug conspiracy, she's guilty
16 of no more than 50 grams. Thank you.

17 MR. JUBIN: Good morning, ladies and gentlemen. May
18 it please the Court.

19 THE COURT: Mr. Jubin.

20 MR. JUBIN: Mr. Healy, Mr. Fleener, Mr. Molina. You
21 know, one of the things that you folks got to see was this
22 photograph of Mr. Molina that was hanging on the wall, hanging
23 on the wall in the office there where the safes were. And
24 what's he doing? He's got a knife in his mouth. He's posing.
25 He's got a lever-action rifle in his hand. He's got this old

1 leather belt with a -- with a holster kind of slung low on one
2 side and a piece of leather coming off.

3 Why were you shown that? Do you think that's really
4 evidence of anything here? Or is it an effort to try to
5 misdirect you, to make you think that somehow guns and Sigi
6 Molina are connected? Well, they are. He had guns. He had a
7 couple in his safe. He had ammunition in the garage. But it
8 wasn't any AK, AKK, whatever it was, that Whitney Rose talked
9 about. There wasn't the -- you saw the demonstrative of the
10 Tech 9 that supposedly some witness claimed. There weren't
11 those things.

12 What you had was two firearms in a safe. And
13 according to the evidence and the witness, Mr. Molina believed,
14 genuinely believed those guns were unloaded.

15 So what's the significance of that? Well, the one
16 bullet that you saw, remember it was kind of at an angle. It
17 wasn't seated in the chamber. There was some testimony about
18 that. It wasn't even really in the right position. For that
19 matter, we don't even know it was the right caliber. All we
20 know, it was a big surprise to Mr. Molina and he said,
21 eventually said, "Yeah, the last time I looked at that gun,
22 last time I did anything with that was a couple weeks ago I
23 went out shooting that and maybe that's why it is not all
24 wrapped in plastic. We went out to that Sleepy Hollow place he
25 had and I shot it, and maybe that's why it wasn't wrapped up."

1 But, so, what was it doing? Was it there
2 strategically located, armed, ready to go so he could protect
3 his guns -- or protect his drugs? No. Where was the clip?
4 Can't fire the gun without the clip except for the one bullet
5 he didn't know was there? Where was the clip? In the garage.
6 Where was the ammunition? In the garage. Was the .22 loaded?
7 No. It was wrapped up. How strategically located is that to
8 protect his guns? It isn't. And, as Mr. Fleener pointed out,
9 the .40 caliber gun was in a holster.

10 So is it protecting his drug proceeds? Is it
11 protecting his drugs? Is it to threaten people with drug
12 debts? You heard none of that. And the circumstances simply
13 don't bear that out whatsoever.

14 If you -- you will get a chance to listen to the -- or
15 to look at the instruction again that talks about what the
16 factors are. Well, one of the important factors is
17 accessibility of the firearm, and that's because, as the Courts
18 have indicated, is it strategically located in such a way as
19 you can grab it. Remember Kyle Carothers, he had it right
20 under the couch. Not Mr. Molina.

21 Is it stolen? No evidence of that.

22 Type of firearm. Well, it is a .40 caliber pistol and
23 a -- in a holster and a .22 pistol. These are standard kind of
24 weapons.

25 What are the circumstances surrounding the acquisition

1 of the firearm? Now there's an interesting one. Nobody said
2 that the .22 was traded for drugs. There was testimony that
3 Brodie said he owed some money, and he just gave him the .22.
4 Did that further a drug crime? Well, if you think about it, if
5 the drug crime, this little piece of methamphetamine that
6 Mr. Healy has referenced, if that had already occurred and it
7 was a done deal, using the gun to pay off a debt, a past debt,
8 not an actual trade right there, but a past debt, doesn't do
9 anything to further it. The events have already occurred.

10 And then we come to the .40 caliber. Suddenly, on the
11 witness stand, Mr. Brodie, who has one aim in life, avoid a
12 pine box sentence, avoid spending the rest of his breathing
13 days in a prison cell, suddenly he comes up and he tells you,
14 "Oh, yeah, yeah, that .40, must be traded for -- traded for
15 drugs, yeah. Well, I never mentioned that before. I'm just
16 kind of right now, right before trial and then right here in
17 front of the jury." And, well, was it this gun? What did he
18 tell you? He said, "I don't know." And then at one point he
19 looked at it and said, "That's it," but he also told you, "I
20 don't know if it was that gun," kind of like that.

21 And he also testified, "I never gave Mr. Molina a gun
22 in exchange for dope." Some of you may have written that down
23 when he said that, "I never gave Molina a gun in exchange for
24 dope." And then he had to be reminded, oh, yeah, yeah, he had
25 a sudden new claim that -- perhaps his lifesaving claim that,

1 yeah, the .40 was -- was traded for the gram of drugs to some
2 guy named Nate and -- yeah, uh-huh.

3 Compare that to what Agent McDonald said, that Sigi
4 Molina told him where that gun came from. He said it was for
5 rent. Two weeks later Brodie wanted the gun back. Molina
6 wouldn't give it to him because he didn't have the rent money.

7 So proximity to drugs or profits, time and
8 circumstances under which the firearm was found, the status of
9 the possession, was it legitimate or illegal, no evidence that
10 any of those things contribute to the notion that those guns in
11 that safe furthered drug trafficking.

12 What did Whitney Rose say about guns? Saw this AAK or
13 whatever it was, saw another like this, and she indicated. We
14 don't know if she was talking about a pistol or a rifle or
15 what. And she said on a single occasion she was shown guns,
16 perhaps with the idea of going out shooting at the range. She
17 said the guns weren't used to threaten anyone. She didn't use
18 any guns to trade for drugs.

19 Heidi Blankenship talks about -- she was a mess, an
20 opiate addict, heroin addict. And there was some broken gun
21 she talked about, and she didn't say that she traded that gun
22 for methamphetamine. She said, rather, that gun was given to
23 take \$200 off of her debt. Again, any transaction that might
24 have occurred that created that debt, the actual drug
25 trafficking was long gone. That was done and over with.

1 Paying somebody with a gun after the fact, that doesn't further
2 the trafficking.

3 Couple things to remember. We talked around it
4 about -- around it a little bit, but take a look at that
5 (indicating). That's the .22. Does it look like it's
6 strategically placed and located to be available to protect
7 proceeds?

8 And here's a gun you've seen many times. Remember
9 that line there that was drawn to show the direction of the
10 bullet (indicating). This is Exhibit 30, the .40 caliber
11 handgun, how that wasn't seated in there. And there you can
12 see it is kind of weird, weirdly placed in there. Mr. Molina
13 didn't know it was there. It was in the holster. It is
14 clearly not strategically in such a position as to protect
15 anything.

16 And then we had Exhibit 38, tool chest out in the
17 garage. You can see the tool chest. There's a drawer full of
18 ammunition. That's where the ammunition was, the garage. The
19 ammunition is separate from the gun, makes the gun or its
20 possession not in any way strategically connected to protecting
21 drugs or drug proceeds.

22 And you know, there's another thing. Do you remember
23 when Agent McDonald talked about, "Oh, yeah, Sigi Molina told
24 us about his source. His source is Raul. And he -- we found
25 this note with the phone numbers to Mexico."

1 Take a look at that. It is Exhibit 10-A. There's no
2 Raul. It says, "My cell number Alex." I don't know what this
3 has to do with. It certainly doesn't say Raul.

4 The key evidence -- and I'm sorry if I'm repeating
5 this but it's pretty key -- Sigi Molina was genuinely
6 surprised, number one, that the .40 caliber pistol was
7 unwrapped. He just didn't remember it as being unwrapped.

8 Number two, that there was a bullet that was
9 associated with that gun because there was no clip in it, no
10 clip even in the room.

11 You heard about these bottle jacks. Remember Agent
12 Budd, he told you, these jacks all had hydraulic fluid in them.
13 They were operable. You heard testimony about Sigi Molina
14 going out to work on a car at one point, and you also heard
15 evidence from Agent Budd that you bet if these things had been
16 hollowed out in some way where those jacks would have been used
17 to transport methamphetamine, you would have seen them as
18 exhibits here. Well, you didn't.

19 Well, so who is the main person who puts Sigi Molina
20 into this drug trafficking conspiracy? Kyle Carothers. Where
21 was he getting his drugs? He got drugs from his father, Dan
22 Carothers. He said he used with him about ten times. And on
23 multiple occasions Dan Carothers, his very own father, was his
24 source for drugs.

25 Where else did he get drugs? From Adams, a guy named

1 Michael Adams, who had sources in Casper. And you heard the
2 testimony. He -- Kyle Carothers went regularly to Casper, and
3 he even told you, Sigi had nothing to do with it, at least on
4 one or some of those occasions.

5 Kyle Carothers went to Denver with Adams. He went to
6 Denver because a guy named Chris George had a source down
7 there.

8 He had Jacinto who he was best friends with who used
9 to date Whitney Rose and that was a source of drugs.

10 And look at Kyle Carothers. You know, he has the gun
11 loaded underneath the couch where he's got the drugs where it's
12 clearly strategically placed or could be to protect his drugs
13 or drug proceeds. And he's got no gun charges.

14 And what else did he tell you? He had 1 to 1 and a
15 half gram a day habit, smoking multiple times per day. Stayed
16 high all day. Never sold or bought drugs from Heidi, Heidi
17 Blankenship or Robert Brodie. Didn't provide or obtain any
18 guns from Sigi Molina. Now this is Sigi's main guy. He just
19 saw Sigi pull a gun out of a safe to put drugs in it. Okay.
20 He was invited to go to a shooting range but never went.

21 No threats. Rose said nobody was threatening anybody
22 with a gun. Ten-year mandatory minimum for Kyle. No gun
23 charge. Ten-year mandatory minimum for Whitney Rose. No gun
24 charge.

25 You remember what Kyle Carothers told you about his

1 drug use and his memory? He started out saying, "Okay, I got
2 no problems with my memory." That was his testimony. Under
3 oath. And then later on he said, "Well" -- he ended his
4 testimony telling you he was confused by drugs. "I get
5 confused. I've always been that way." You probably put that
6 in your notes.

7 I would ask you to take a look at Instruction 27:
8 "Mere similarity of conduct among various persons, the fact
9 they may have associated with each other, may have assembled
10 together, discussed common aims and interests does not
11 necessarily establish proof of the existence of the
12 conspiracy."

13 These folks were all using drugs. They were trading
14 drugs, at times selling drugs. Does that make them involved in
15 the conspiracy charged? Well, take a look at Instruction 30.
16 You have to determine whether the single conspiracy, the one
17 that's charged in this Indictment, existed with all these other
18 people.

19 What did you hear about Larry Sinning? What did you
20 hear about all these other people who they talked to you about
21 in this Indictment? You have to determine whether that
22 existed, and if it did, whether the defendant was a member of
23 it.

24 And the instruction says proof of several separate
25 conspiracies is not proof of the single overall conspiracy

1 charged in the Indictment unless one of the several
2 conspiracies which is proved is the single conspiracy charged
3 in the Indictment.

4 So if you've got Kyle Carothers over here and over
5 there with various people, and you've got Sigi Molina over
6 here, over there with various people, but it is not the big
7 thing that they've charged saying all these people conspired
8 together, then you have to find him not guilty.

9 It says if you find the defendant was not a member of
10 the conspiracy charged, then you must find the defendant not
11 guilty, even though the defendant may have been a member of
12 some other conspiracy. This is because proof that a defendant
13 was a member of some other conspiracy is not enough to convict.
14 That's Instruction 30.

15 You know, we talked a little bit about the drug use
16 and the incentives and inducements that some of these witnesses
17 had. Instruction 54 tells you you should receive this type of
18 testimony with caution and weigh it with great care, and you
19 all could see there's good reasons for that.

20 And Instruction 55 told you that the testimony of a
21 drug abuser here must be examined and weighed with greater care
22 than the testimony of witnesses who does not abuse drugs. Why
23 is that? They can't remember? No memory formation? They were
24 high? Never formed a memory to begin with. And also, the
25 person might have a need for drugs and they want to get out as

1 soon as they can to satisfy that insatiable need.

2 In the big scheme of things here is Sigi Molina guilty
3 of something? You bet he is. He was using drugs and he was
4 trading drugs with people and he was selling some drugs. He's
5 not a perfect human being. He's done some things wrong. If
6 you believe his statement, it's a lot of drugs. But that
7 statement was given in a circumstance where he was under
8 interrogation, where he was high.

9 MR. HEALY: Your Honor, there's no evidence of that
10 final statement, and I ask that it be stricken and the jury
11 disregard it.

12 THE COURT: They will disregard it. There was no
13 evidence.

14 MR. JUBIN: You remember that the agent said that he
15 told him, "I will take these -- I won't take these charges away
16 right now," and then Mr. Molina signed and talked. So was it
17 voluntary? Well, that's your call. You will see an
18 instruction that allows you to decide did he make that
19 statement voluntarily, or was it a statement that was made
20 based upon that improper inducement?

21 When we're talking about what your job is here you
22 have to make determinations beyond a reasonable doubt. It
23 means that if there are two reasonable conclusions, one
24 conclusion is consistent with guilt and the other conclusion is
25 consistent with innocence, you must, of course, adopt the

1 conclusion of innocence. That's your job. That's what it
2 means to find beyond a reasonable doubt.

3 I ask when you return to the jury room, take a careful
4 look at all the evidence, say was this one big conspiracy or
5 not. If you think it was one conspiracy, the charged
6 conspiracy, and Sigi Molina was involved in that conspiracy,
7 then you should find him guilty. That's your duty.

8 On the other hand, if you think they showed a bunch of
9 different conspiracies and they didn't prove the conspiracy
10 that's charged, you should find him not guilty. And when it
11 comes to the guns, in furtherance of drug trafficking, none of
12 the guns that he possessed and were in his safe furthered any
13 kind of drug trafficking. Thank you.

14 MR. HEALY: Ladies and gentlemen, I'm not going to
15 belabor this. I'm going to try to go through this pretty
16 quickly and just clarify a couple of things that are so -- so,
17 I guess, hard to believe that they need clarification.

18 You have heard the testimony. You've seen the
19 evidence. You've taken notes. You've listened. Rely on what
20 you heard. But there are a couple of things that I need to
21 discuss.

22 One of Mr. Fleener's main premises was that the
23 Government just tried to throw up this .40 caliber with this
24 gun, with this round in the chamber and somehow sort of taint
25 the jury with that. What Mr. Fleener didn't mention was

1 Government's Exhibit 28 which Agent McDonald testified to, I
2 think on the first day, maybe the second day of this trial,
3 where he pointed out both firearms and said, "This firearm on
4 the right-hand side as you're looking at it, ladies and
5 gentlemen, was a .40 caliber in a holster with a round in the
6 chamber," (indicating). That's the testimony.

7 Mr. Fleener also made a big deal about they, they;
8 everybody said they, they. Well, that's just not true. Kyle
9 Carothers said he dealt personally with Jackie Garcia. And
10 Whitney Rose never testified that she was with Kyle Carothers
11 every time he bought dope. In fact, she said that a lot of
12 times she isolated herself.

13 So Heidi Blankenship, now, one of the last statements
14 Mr. Fleener told you is that -- is that Brodie said she was not
15 getting drugs from Jackie. Robert Brodie never said that.
16 Robert Brodie said they would go into that house, they wouldn't
17 have drugs. He would watch Heidi go upstairs with Jackie.
18 Heidi would come down and she would have drugs. Your job is to
19 take the inferences and make reasonable conclusions, and
20 consider the evidence and the Government's burden, which the
21 Government accepts, to prove the defendants guilty beyond a
22 reasonable doubt.

23 "Any and all" is not a phrase that I see in the
24 instructions. Read the instruction on reasonable doubt.
25 Common sense, reason, reasonable doubt.

1 And then, moreover, they, this they -- Heidi
2 Blankenship, Kyle Carothers, Hernandez -- you heard the audio.
3 You will have it in there. You can listen to it in the jury
4 room as long as you need to. Consider what's going on with
5 Jackie Garcia and Hernandez at the beginning of this charged
6 conspiracy.

7 Mr. Jubin asked why would the Government show a
8 firearm in a case -- show the defendant holding a firearm and
9 carrying another one in a case where the defendant is charged
10 with possessing firearms in furtherance of a drug trafficking
11 crime. The question is why wouldn't the Government show that
12 photo? It is part of one of the elements of the offense, the
13 very things the jury needs to be most concerned about when it's
14 deliberating on the guilt or innocence of these people.

15 There's also what I warned you about. Mr. Jubin was
16 trying to isolate everything to January 16th, 2013. Those two
17 firearms are circumstantial evidence supporting the testimony
18 of Kyle Carothers, of all the firearms he saw; the defendant's
19 own statement that he had a .25 auto that he exchanged to --
20 for meth; that he had another firearm that he exchanged for
21 meth, a .40 caliber which happened to be the one in there.

22 I mean, certainly, the Government isn't trying to
23 convince the jury that all the firearms that were mentioned
24 that were in the possession of either Jackie Garcia or Mr.
25 Molina were in the safe that day. That is not what the

1 Government is suggesting, which is also why the demonstrative
2 exhibit that so offends Mr. Fleener was showed to the jury.
3 Kyle Carothers testified he saw a Tech 9. He knows what a Tech
4 9 is. A demonstrative exhibit is to help understand testimony.
5 Not everybody in the world knows what a Tech 9 is.

6 Also, like -- you may recall in the Kyle Carothers
7 testimony when Mr. Jubin was cross-examining Mr. Carothers on
8 his plea agreement and Mr. Jubin said, "Isn't it true that it
9 is the Government -- the Government will only do this if you
10 meet their criteria," and then he left out what the rest of the
11 Government's criteria is -- you judge the witness' credibility.
12 You judge whether they're right or wrong about what happened,
13 whether their addiction affected their memory. That's your
14 job. But you need to read everything when you read these
15 instructions.

16 And when Mr. Jubin goes on and on about this if he was
17 involved in another conspiracy, he's not guilty. That's not
18 right, ladies and gentlemen. You have to read the instruction,
19 Instruction 30. But proof that a defendant -- this was the
20 part that Mr. Jubin left out -- but proof that a defendant was
21 a member of some other conspiracy would not prevent you from
22 returning a guilty verdict if the Government proved beyond a
23 reasonable doubt that the defendant was also a member of the
24 conspiracy charged in the Indictment.

25 Now, you can, I guess -- it is up to you how you

1 decide to do this. There was a point in time when Mr. Molina,
2 at least Mr. Molina and Mr. Adams and Mr. George and
3 Mr. Carothers were running down to Denver and getting dope.
4 Now, whether taking Mr. Molina's source out changes the
5 conspiracy or not, that's up to you to decide. But there's no
6 question that at some point that conspiracy was going on. It
7 stopped for a brief period of time, or at least the source
8 dried up, and it started again as soon as the source came back.

9 Finally, there was all sorts of talk about whether
10 this firearm was strategically placed or whether Jackie Garcia
11 meant to grab the gun out of the holster or put the holster
12 back in. You will all talk about this. Put the gun back in
13 the holster, had it out and put it back in. The safe was open.
14 There's all this talk about strategy and whether it was
15 strategically placed to grab and protect gun proceeds and
16 threaten people.

17 The instruction is this -- and those are all factors
18 of course you can consider, but the instruction is this: You
19 are instructed possession in furtherance of means for the
20 purpose of assisting in, promoting, accomplishing, advancing or
21 achieving the goal or objective of the underlying offense. A
22 conspiracy is trading a gun and relieving a drug debt or giving
23 a small amount of methamphetamine in exchange for it.

24 Part of a story of a conspiracy? That's for you to
25 decide, ladies and gentlemen. The Government submits to you

1 that it is. Thank you.

2 THE COURT: Ladies and gentlemen, we are now into your
3 lunch hour. There are a number of instructions yet to give to
4 the jury. I think I will go ahead and read the instructions
5 and get this case submitted to the jury.

6 Unless you are otherwise instructed, the evidence in
7 this case consists of the sworn testimony of the witnesses,
8 regardless of who may have called them, and all exhibits
9 received in evidence, regardless of who may have produced them.
10 Any evidence to which an objection was sustained by the Court
11 and any evidence ordered stricken by Court must be entirely
12 disregarded. Anything you may have seen or heard outside the
13 courtroom is not evidence and must be entirely disregarded.

14 You have been chosen and sworn as jurors in this case
15 to try the issues of fact presented by the allegations of the
16 indictment and the denial made by the not guilty pleas of the
17 Defendants Jacqueline M. Garcia and Sigifredo Molina Varela.

18 You are to perform this duty without bias or prejudice
19 as to any party. The law does not permit jurors to be governed
20 by sympathy, prejudice or public opinion.

21 Both the defendants, Jaqueline Garcia and Sigifredo
22 Molina Varela, and the public expect that you will carefully
23 and impartially consider all the evidence in the case, follow
24 the law as stated by the Court and reach a just verdict
25 regardless of the consequences.

1 Generally speaking, two types of evidence from which a
2 jury may properly find the truth as to the facts of a case, one
3 is direct evidence, such as the testimony of an eyewitness.
4 The other is indirect or circumstantial evidence, the proof of
5 a chain of circumstances pointing to the existence or
6 nonexistence of certain facts. As a general rule, the law
7 makes no distinction between direct and circumstantial
8 evidence, but simply requires that the jury find the facts in
9 accordance with all of the evidence in the case, both direct
10 and circumstantial.

11 If any evidence by the Court or counsel through
12 matters or testimony or exhibits does not coincide with your
13 own recollection of that evidence, it is your recollection
14 which should control during your deliberations and not the
15 statements of the Court or of counsel.

16 You are the sole judges of the evidence received in
17 the case. Questions asked by a lawyer for either party to this
18 case are not evidence. Therefore, if a lawyer asks a question
19 of a witness which contains an assertion of fact, you may not
20 consider the assertion by the lawyer as any evidence of that
21 fact. Only the answers are evidence.

22 Inferences are simply deductions or conclusions which
23 reason and common sense lead the jury to draw from the evidence
24 received in the case. You as jurors are the sole judges of the
25 credibility of the witnesses and of the weight to be given to

1 their testimony. You may be guided by the appearance and
2 conduct of the witnesses or the manner in which the witness
3 testifies or by the character of the testimony given or
4 evidence to the contrary of the testimony given.

5 You should scrutinize all of the testimony given, the
6 circumstances under which each witness has testified and every
7 matter in evidence which tends to show whether a witness is
8 worthy of belief.

9 Consider each witness' intelligence, motive, state of
10 mind, demeanor and manner while on the witness stand. Consider
11 the witness' ability to observe the facts as to which he or she
12 has testified and whether he or she impresses you as having an
13 accurate recollection of these matters.

14 Consider also any relation each witness may bear to
15 either side of the case, the manner in which each witness might
16 be affected by the verdict and the extent to which, if at all,
17 each witness is either supported or contradicted by other
18 evidence in the case.

19 Inconsistencies or discrepancy in the testimony of a
20 witness or between the testimony of different witnesses may or
21 may not cause the jury to discredit such testimony. Two or
22 more persons witnessing an incident or transaction may hear or
23 see it differently and innocent misrecollection, like failure
24 of recollection, is not an uncommon experience. In weighing
25 the effect of a discrepancy, always consider whether it

1 pertains to a matter of importance or an unimportant detail and
2 whether the discrepancy results from innocent error or
3 intentional falsehood.

4 After making your own judgment, you will give the
5 testimony of each witness such weight, if any, as you may think
6 it deserves.

7 The rules of evidence ordinarily do not permit
8 witnesses to testify as to opinions or conclusions. An
9 exception to this rule exists as to those whom we call expert
10 witnesses. Witnesses who by education and experience have
11 become expert in some art, science, profession or calling may
12 state their opinions as to relevant and material matters in
13 which they profess to be expert and may also state their
14 reasons for the opinion.

15 You should consider each expert opinion received in
16 evidence in this case and give it such weight as you may think
17 it deserves. If you should decide that the opinion of an
18 expert witness is not based upon sufficient education,
19 experience, or if you should conclude that the reasons given in
20 support of the opinion are not valid, or if you feel that it is
21 outweighed by other evidence, you may disregard that opinion
22 entirely. As I have told you several times, you, the jury, are
23 the sole judges of the facts.

24 In weighing the weight to be given to an opinion
25 expressed by any witness who did not testify as an expert

1 witness, you should consider his or her credibility, the extent
2 of his or her opportunity to perceive the matters upon which
3 his or her opinion is based and the reasons, if any, given for
4 it. You're not required to accept such an opinion but should
5 give it such weight to which you think it is entitled.

6 A witness may be discredited or impeached by
7 contradictory evidence or by evidence that at some other time
8 the witness has said or done something or has failed to say or
9 do something that is inconsistent with the witness' present
10 testimony or by evidence that the witness has been convicted of
11 a felony.

12 If you believe any witness has been impeached and thus
13 discredited, it is your exclusive province to give the
14 testimony of that witness such credibility, if any, as you may
15 think it deserves.

16 The testimony of a witness may be discredited or
17 impeached by showing that the witness previously has been
18 convicted of a felony, that is, of a crime punishable by
19 imprisonment for a term of years. A prior conviction does not
20 mean that a witness is not qualified to testify, but is merely
21 one circumstance that you may consider in determining the
22 credibility of the witness.

23 You may decide how much weight to give any prior
24 felony conviction that was used to impeach a witness.

25 You have heard the testimony of certain witnesses who

1 are providing evidence for the Government in exchange for a
2 promise from the Government that the prosecution will recommend
3 lenient treatment for them in their own cases. They told the
4 Government what they would testify to in exchange for these
5 promises.

6 The Government may present the testimony of someone
7 who has been promised favorable treatment in his or her own
8 case in exchange for his or her testimony. Some people in this
9 position are entirely truthful when testifying. Still, you
10 should consider the testimony of these witnesses with more
11 caution than the testimony of other witnesses. They may have
12 had reason to make up stories or exaggerate what others did
13 because they want to strike a good bargain with the Government
14 about their own cases. In deciding whether you believe the
15 testimony of these witnesses you should keep these comments in
16 mind.

17 The Government has called among its witnesses alleged
18 accomplices who have been named as codefendants in the
19 indictment. The Government has entered into plea agreements
20 with the codefendants, providing in some cases to forgo certain
21 charges and/or a recommendation of a lesser sentence. Plea
22 bargaining is lawful and proper, and the rules of this court
23 expressly provides for it.

24 An alleged accomplice, including one who has entered
25 into a plea agreement with the Government, is not prohibited

1 from testifying. On the contrary, the testimony of an alleged
2 accomplice may by itself support a guilty verdict. You should
3 receive this type of testimony with caution and weigh it with
4 great care. You should never convict a defendant upon the
5 unsupported testimony of an alleged accomplice unless you
6 believe that testimony beyond a reasonable doubt. The fact
7 that an accomplice has entered a guilty plea to the offense
8 charged is not evidence of the guilt of any other person.

9 The testimony of a drug abuser must be examined and
10 weighed by the jury with greater care than the testimony of a
11 witness who does not abuse drugs. The jury must determine
12 whether the testimony of the drug abuser has been affected by
13 drug use or the need for drugs.

14 The evidence has been presented about a statement
15 attributed to the defendant alleged to have been made after the
16 commission of the crimes charged in this case but not made in
17 court. Such evidence should always be considered by you with
18 caution and weighed with care. You should give any such
19 statement the weight you think it deserves after considering
20 all of the circumstances under which the statement was made.

21 In determining whether any such statement is reliable
22 and credible, consider factors bearing on the voluntariness of
23 the statement. For example, consider the age, gender,
24 training, education, occupation, and physical and mental
25 condition of the defendant and any evidence concerning his

1 treatment while under interrogation if the statement was made
2 in response to questioning by government officials and all
3 other circumstances in evidence surrounding the making of the
4 statement. After considering all this evidence, you may give
5 such weight to the statement as you feel it deserves under all
6 the circumstances. If you determine that the statement is
7 unreliable or not credible, you may disregard the statement
8 entirely.

9 The Government has presented evidence that Defendant
10 Sigifredo Molina Varela may have made admissions to law
11 enforcement in this case. To whatever extent you choose to
12 believe Sigifredo Molina Varela's admission -- admissions as
13 they pertain to him, they are to have no bearing on the guilt
14 of Jacqueline M. Garcia.

15 The defendants Jacqueline M. Garcia and Sigifredo
16 Molina Varela did not testify, and I remind you that you cannot
17 consider the decision not to testify as evidence of guilt. You
18 must understand that the Constitution of the United States
19 grants to the defendant the right to remain silent. That means
20 the right not to testify. That is a constitutional right in
21 this country. It is very carefully guarded. And you must not
22 presume or infer guilt from the fact that a defendant does not
23 take the witness stand and testify or call any witnesses.

24 As stated before, the law never imposes upon a
25 defendant in a criminal case the burden or duty of calling any

1 witnesses or producing any evidence.

2 It has been the duty of the attorney on each side of
3 the case to object when the other side has offered testimony or
4 other evidence which the attorney believes is not properly
5 admissible. You should not show prejudice against any attorney
6 or his client because the attorney has made an objection. Upon
7 allowing testimony or other evidence to be introduced over the
8 objection of any attorney, the law does not, unless expressly
9 stated, indicate any opinion as to the weight or effect of any
10 such evidence.

11 As stated before, the jurors are the sole judges of
12 the credibility of all witnesses and the weight and effect of
13 all evidence. When the Court has sustained an objection to a
14 question addressed to a witness, the jury must disregard the
15 question entirely and may draw no inference from the wording of
16 it or speculate as to what the witness would have said if he
17 had been permitted to answer any question.

18 During this trial, you have heard sound recordings of
19 certain conversations. These conversations were legally
20 recorded. They are a proper form of evidence and may be
21 considered by you as you would any other evidence.

22 You were also given transcripts of those recorded
23 conversations. Keep in mind that the transcripts are not
24 evidence. They were given to you only as a guide to help you
25 follow what was being said. The recordings themselves are the

1 evidence. If you noticed any difference between what you heard
2 on the recordings and what you read in the transcripts, you
3 must rely on what you heard, not on what you read. If you
4 could not hear or understand certain parts of the recordings,
5 you must ignore the transcript as far as those parts are
6 concerned.

7 During this trial I have permitted you to take notes.
8 Many courts do not permit note taking by jurors and a word of
9 caution is in order. There's always a tendency to attach undue
10 importance to matters which one has written down. Some
11 testimony which is considered unimportant at the time presented
12 and thus not written down takes on greater importance later in
13 the trial in light of all the evidence presented. Therefore,
14 you are instructed that your notes are only a tool to aid your
15 own individual memory and you should not compare your notes
16 with other jurors' in determining the content of any testimony
17 or in evaluating the importance of any evidence.

18 Your notes are not evidence and are by no means a
19 complete outline of the proceedings or a list of the highlights
20 of the trial. Above all, your memory should be your greatest
21 asset when it comes time to deliberate and render a decision in
22 this case.

23 The punishment provided by law for the offenses
24 charged in the Indictment is a matter exclusively within the
25 province of the Court and should never be considered by the

1 jury in any way in arriving at an impartial verdict as to the
2 guilt or innocence of a defendant.

3 During your deliberations you must not communicate
4 with or provide any information to anyone by any means about
5 this case. You may not use any electronic device or media such
6 as a telephone, cell phone, smart phone, iPhone, BlackBerry or
7 computer, the Internet, any Internet service or any text or
8 instant messaging service, or any Internet chatroom, blog or
9 website such as Facebook, MySpace, LinkedIn or Twitter to
10 communicate to anyone any information about this case or to
11 conduct any research about this case until I accept your
12 verdict.

13 Upon retiring to the jury room, you will select one of
14 your number to act as the presiding juror. The presiding juror
15 will preside over your deliberations and will be your spokesman
16 here in court. Your verdict must reflect the collective
17 agreement of the jury. In order to return a verdict, it is
18 necessary that each juror agree to it. Your verdict, in other
19 words, must be unanimous.

20 It is your duty as jurors to consult with one another
21 and to deliberate with one another with a view towards reaching
22 an agreement if you can do so without violence to individual
23 judgment. Each of you must decide the case for himself and
24 herself, but do so only after impartial consideration of the
25 evidence in the case with your fellow jurors. In the course of

1 your deliberations, do not hesitate to reexamine your own views
2 and to change your opinion if convinced it is erroneous.

3 Do not surrender your honest conviction, however,
4 solely because of the opinion of your fellow jurors or for the
5 mere purpose of returning a verdict. Remember at all times
6 that you are not partisans. You are judges, judges of the
7 facts of the case. Your sole interest is to seek the truth
8 from the evidence received during the trial.

9 Your verdict must be based solely upon the evidence
10 received in the case. Nothing you have seen or read outside of
11 court may be considered. Nothing that I have said or done
12 during the course of this trial is intended in any way to
13 somehow suggest to you what I think your verdict should be.

14 Nothing said in these instructions, nothing in any
15 form of verdict prepared for your convenience is to suggest or
16 convey to you in any way or manner any intimation as to what
17 verdict I think you should return. What the verdict shall be
18 is the exclusive duty and responsibility of the jury. And as I
19 have told you many times, you are the sole judges of the facts.

20 The Court has prepared a verdict form for your
21 convenience. You will take the verdict forms to the jury room,
22 and when you have reached a unanimous agreement as to your
23 verdict, you will have your presiding juror fill in, date and
24 sign the verdict forms upon which you have unanimously agreed.
25 When you have reached unanimous agreement as to your verdict,

1 the presiding juror shall inform the bailiff and you shall
2 return to the courtroom.

3 If it becomes necessary during your deliberations to
4 communicate with the Court, you may send a note signed by your
5 presiding juror or by one or more members of the jury through
6 the bailiff. No member of the jury should ever attempt to
7 communicate with the Court by any means other than a signed
8 writing, and the Court will never communicate with any member
9 of the jury on any subject touching the merits of the case
10 other than in writing or orally here in open court.

11 You will note from the oath about to be taken by the
12 bailiff that the bailiffs, too, as well as all other persons
13 are forbidden to communicate in any way or manner with any
14 member of the jury on any subject touching the merits of the
15 case.

16 Bear in mind that you are not to reveal to the Court
17 or to any person how the jury stands numerically or otherwise
18 on the question before you, whether or not the United States
19 has sustained its burden of proof, until after you have reached
20 a unanimous verdict.

21 And these are the verdicts. There are several of them
22 in this case. First is the verdict form with regard to
23 Jacqueline M. Garcia: We, the jury, duly impaneled in the
24 above entitled case, do unanimously find, beyond a reasonable
25 doubt, as follows: 1, as to the charge contained in Count 1 of

1 the Indictment, conspiracy to possess with intent to distribute
2 and to distribute methamphetamine, we unanimously find beyond a
3 reasonable doubt Defendant Jacqueline M. Garcia to be, not
4 guilty, guilty. And you signify your verdict by marking an X
5 in the space in front of the verdict that is unanimous.

6 If the jury has found the Defendant Jacqueline M.
7 Garcia guilty of the charge contained in Count 1 of the
8 Indictment, conspiracy to possess with intent to distribute and
9 distribution of methamphetamine, please proceed to answer the
10 question in part 1-A.

11 Part 1-A, we unanimously find beyond a reasonable
12 doubt that the quantity of methamphetamine Defendant Jacqueline
13 M. Garcia possessed with intent to distribute and to distribute
14 in the conspiracy charged in Count 1 of the Indictment was,
15 check one only -- or check only one, and then there are three
16 choices: 500 grams or more, 50 grams or more, less than 50
17 grams.

18 Question 2: As to the charge contained in Count 2 of
19 the Indictment, possess a firearm in furtherance of a drug
20 trafficking crime, we unanimously find beyond a reasonable
21 doubt Defendant Jacqueline M. Garcia to be not guilty, guilty,
22 dated this 13th day of May, 2013, and it will be signed by the
23 presiding juror.

24 The verdict of Sigifredo Molina Varela, also known as
25 Sigi, we, the jury, duly impaneled in the above-entitled case,

1 do find unanimously beyond a reasonable doubt as follows: 1,
2 as to the charge contained in Count 1 of the Indictment,
3 conspiracy to possess with intent to distribute and to
4 distribute methamphetamine, we unanimously find beyond a
5 reasonable doubt Defendant Sigifredo Molina Varela, also known
6 as Sigi, to be not guilty, guilty.

7 If the jury has found the defendant guilty of the
8 charge contained in Count 1 of the Indictment, please proceed
9 to answer the question in part 1-A.

10 1-A, we unanimously find beyond a reasonable doubt
11 that the quantity of methamphetamine Defendant Sigifredo Molina
12 Varela, also known as Sigi, possessed with intent to distribute
13 and to distribute in the conspiracy charged in Count 1 of the
14 Indictment was: 500 grams or more, 50 grams or more, less than
15 50 grams.

16 Question 2: As to the charge contained in Count 2 of
17 the Indictment, possess a firearm in furtherance of a drug
18 felony, we unanimously find beyond a reasonable doubt Defendant
19 Sigifredo Molina Varela, also known as Sigi, to be not guilty,
20 guilty, dated this 13th day of May, 2013, signed by presiding
21 juror.

22 I see Gary Oedegaard in the back of the courtroom, one
23 of our CSOs. Each of these gentlemen wearing the blue coats
24 has taken the oath to protect the jury and prevent anyone from
25 overhearing your deliberations during the time you are in the

1 jury room. And I can tell you, each of these gentlemen has a
2 distinguished career behind them as a law enforcement officer
3 and are perfectly capable of carrying out that duty without any
4 problem at all to attend to you.

5 Mr. Oedegaard, would you take the oath?

6 (Bailiff sworn.)

7 THE COURT: Now, we come to a very awkward time in
8 this entire proceedings, one that I've never looked forward to
9 because it is somewhat hurtful. During every jury trial I
10 think each juror discovers that their fellow citizens, no
11 matter what their station in life, are serious about their duty
12 as jurors and are more than willing to contribute all of their
13 efforts towards reaching a fair verdict based upon the evidence
14 and weight of the evidence.

15 However, the separation is difficult because we suffer
16 a little bit of separation anxiety. But our tradition and
17 culture supports the number of 12 jurors to decide every case.
18 And we have two alternates who have provided assurance that we
19 would have 12 jurors throughout this case, and we're now
20 sending you to deliberate, and I must separate those two
21 alternate jurors from the rest of you who have provided the
22 same quality of service, been present and worked throughout and
23 paid careful attention in this case.

24 Alternate Juror No. 33 and Alternate Juror No. 19 are
25 excused at this time from your jury service. I will tell you

1 that you only need to inform the clerk of court's office that
2 you have served for this term, and you will be excused from
3 further service during this term. However, if you would care
4 to serve in another case, we would be very pleased to have you
5 continue on with your jury service.

6 Also, if you wish to know what your fellow jurors
7 decide in this case, I will have John, if you leave your
8 number, call you and advise you what the outcome of this trial
9 is. So just let John Lang here who is serving as courtroom
10 deputy now, and he will make that call.

11 As tempting as it would be to include you in the free
12 government lunch that you're going to get, the rest of the
13 jurors are going to get, I am afraid that now that I've
14 submitted this case to the jury, I will have to exclude you
15 from that. I'm sorry.

16 Ladies and gentlemen of the jury, this case is now
17 submitted to you to agree upon unanimous verdicts in this case.
18 Actually, if you wanted to go ahead and get your coats out of
19 the jury room, I will let you go ahead and release you both so
20 that you're free.

21 The case is now submitted to you to agree upon a
22 verdict. You will take into the jury room your memories and
23 your notes that you have taken throughout this case. You may
24 take no other books, newspapers, dictionaries, computers, or
25 anything else touching upon the merits of this case without the

1 permission of the Court.

2 Confine your deliberations to the jury room. There
3 will be times -- couple smokers in the group -- when you take a
4 break for a smoke out in front of the building. It is a nice
5 day. Use that time to kind of recharge the battery and relax a
6 little bit, and then resume your work back in the jury room.
7 It would be terrible if anybody would say later that the case
8 was decided while they were in the bathroom or having a smoke
9 outside.

10 So when somebody leaves your presence, just relax a
11 little bit until they're back and then everybody gets to
12 participate in arriving at the verdict in this matter. All of
13 you should feel that you have been able to contribute to it
14 during this case.

15 You set your own hours of work and time that you wish
16 to work. If you arrive at a time that you feel you need to
17 recess the jury and the jurors, everyone agrees, that's fine.
18 Just announce to the bailiff when you will be reconvening. And
19 remember this instruction: While you're outside of the jury
20 room, you are not to discuss this case or permit anyone to
21 discuss it with you or attempt to learn about this case from
22 any sources which I have referred to endlessly throughout the
23 course of this proceedings.

24 Use the lunch hour to have a nice meal.

25 Counsel, I believe this jury will be going to the Egg

1 and I up the street, so, ladies and gentlemen, don't go to the
2 Egg and I for lunch today. Let the jurors eat in peace and
3 outside of any improper influence from outside of this
4 courtroom. I'm sure there's something I should have said to
5 the jury. Can you think of anything, Mr. Healy?

6 MR. HEALY: No, I can't, Your Honor.

7 THE COURT: Mr. Jubin.

8 MR. JUBIN: No.

9 MR. FLEENER: No, sir.

10 THE COURT: Thank you, Mr. Fleener.

11 You will take with you the instructions and the
12 evidence.

13 Make sure, Counsel, that you go through the evidence
14 before it goes into the jury room to exclude those items. Will
15 a special machine be needed to play the tape if the jury wants
16 to have that tape played or play the disk?

17 MR. HEALY: Just a computer probably, Your Honor.

18 Your Honor, with respect to the guns and the
19 controlled substances, Agent Budd will probably take custody of
20 those unless the jury wants to see them at some point and then
21 could we bring them back down for the --

22 THE COURT: That would be fine. We will bring them
23 back into the courtroom to let the jury examine them if they
24 wish to do that.

25 There was something I forgot.

1 MR. HEALY: Thank you.

2 THE COURT: Occasionally there are questions and the
3 question oftentimes is this: Could we have the testimony of
4 Witness X read back to us? Jan Davis, this lady in front of
5 us, can do that. In fact, she was the president of the
6 national organization of court reporters two years ago and is
7 one of the finest realtime reporters that I have ever
8 encountered. I have been watching everything come across my
9 screen here as it has gone on.

10 But when that happens, we all gather with the
11 attorneys and the Court and read the question and the attorneys
12 think, "Oh, my God, what are those people thinking about about
13 this case?"

14 And one side or the other will say, "By all means,
15 read this important testimony back." And the other side will
16 immediately chime up and say, "Well, Your Honor, you are unduly
17 emphasizing that limited amount of testimony over all the
18 important testimony in this case. If you do that, we're going
19 to have to read back all of the evidence."

20 Well, I'm not going to spend another week doing that
21 and you wouldn't want to do another several days. So usually I
22 will say, "Continue your deliberations, use your memory and
23 keep working."

24 If you are truly stuck, candidly, we will end up
25 reading back whatever you need read back to you at some point.

1 But first of all we want you to consult your memories and
2 decide this case.

3 The second thing is more than once during my life the
4 jury has come back with a question about the instructions and
5 we have all sat around and said, "How could we have missed it,
6 you know? There's something missing." And if that happens, we
7 will draft an instruction and bring you back in and read that
8 instruction to you. That's happened. So I'm not telling you
9 not to ask questions. But sometimes the instructions are
10 adequate, we look them over and we will say, "Continue your
11 deliberations." Ultimately you're going to have to decide your
12 case with unanimous verdicts.

13 We will stand in recess until the jury returns its
14 verdict.

15 (Following out of the presence of the jury.)

16 THE COURT: Let the record reflect that the Court
17 persists in all rulings that it has made prior to commencement
18 of this trial. As to objections made during the course of the
19 trial, the Court persists in those.

20 The record should reflect that the defendants have
21 renewed their motions of judgment of acquittal in this case,
22 and the Court has determined that this matter should go to the
23 jury for their decision, and there is a sufficient evidence to
24 go to the jury and that reasonable minds could differ.

25 I further find, I think there was only one occasion in

1 this matter where a statement was received that might
2 questionably be subject to an 801(d)(2)(E) determination, and
3 the evidence in this case does -- is sufficient to establish a
4 conspiracy. Further, that the statement was made by a
5 coconspirator and was made during and in the course of the
6 conspiracy and in furtherance thereof.

7 All objections to instructions are renewed and the
8 Court persists in its rulings on those and has tendered copies
9 of instructions that were tendered by counsel and refused are
10 now in the custody of the courtroom deputy.

11 Anything else we need to cover?

12 MR. JUBIN: Your Honor, should the record require an
13 affirmative statement by counsel for Mr. Molina, this is the
14 affirmative statement making that post-trial motion that you
15 indicated the record would reflect. Thank you.

16 THE COURT: Thank you.

17 MR. FLEENER: I will join.

18 THE COURT: Thank you, Mr. Fleener.

19 Anything further? Going to be headed out pretty
20 quick?

21 THE CLERK: They are going to be headed out pretty
22 quick, Your Honor. I passed on to them the appropriate letter.

23 Do you have everybody's phone numbers?

24 THE CLERK: I will collect those in a moment, Your
25 Honor.

1 THE COURT: All right. Thank you.

2 (Proceedings recessed 1:00 p.m.)

3 (Proceedings reconvened 4:45 p.m.)

4 (Following in the presence of the defendants.)

5 * * * * *

6 (Rendition of verdict transcribed and
7 contained in Volume V(a) filed separately.)

8 * * * * *

9 (Proceedings concluded 5:10 p.m., May 13, 2013.)

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C E R T I F I C A T E

I, JANET DAVIS, Federal Official Court Reporter for the United States District Court for the District of Wyoming, a Registered Merit Reporter and Federal Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the foregoing proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing pages constitute a full, true and correct transcript.

Dated this 15th day of October, 2013.

/s/ Janet Davis

JANET DAVIS
United States Court Reporter
Registered Merit Reporter
Federal Certified Realtime Reporter